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Supreme Court, U.S.
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No. 02-1196

In the Supreme Court of the United States

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

CHARLES E. EDWARDS

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JOINT APPENDIX
(VOLUME I)

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PETITION FOR WRIT OF CERTIORARI FILED: Feb. 13, 2003
CERTIORARI GRANTED: Apr. 21, 2003

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UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 01-10107-DD

SECURITIES AND EXCHANGE COMMISSION,
PLAINTIFF-APPELLEE

v.

ETS PAYPHONES, INC., DEFENDANT
CHARLES E. EDWARDS, DEFENDANT-APPELLANT

DOCKET ENTRIES

DATE	DOCKET ENTRY
12/27/2000	Fee Paid by Appellant Charles E. Edwards
	* * * * *
08/28/2001	Brief of Appellant Charles E. Edwards Filed
	* * * * *

DATE	DOCKET ENTRY
10/12/2001	Brief of Appellee Securities and Exchange Commission Filed
	* * * * *
10/29/2001	Reply Brief Filed (Corrected Reply Brief Filed 11/05/01)
	* * * * *
08/06/2002	Opinion Issued
08/06/2002	Judgment Entered
	* * * * *
09/20/2002	Appellee Securities and Exchange Commission's Petition for Rehearing and Rehearing En Banc Filed
	* * * * *
11/15/2002	Petition for Rehearing and Rehearing En Banc Denied
	* * * * *

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

No. 00-CV-2532

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

ETS PAYPHONES, INC., DEFENDANT
AND CHARLES E. EDWARDS, DEFENDANT

DOCKET ENTRIES

DATE	DOCKET NUMBER	DOCKET ENTRY
9/29/00	1	Complaint for injunctive and other relief
		* * * * *
9/29/00	3	Emergency motion by plaintiff for asset freeze, preliminary injunction and other equitable relief with brief in support

DATE	DOCKET NUMBER	DOCKET ENTRY
		* * * * *
10/11/00	11	Opposition by defendant Charles E. Edwards to motion for asset freeze, preliminary injunction and other equitable relief
		* * * * *
10/24/00	20	Answer by defendant Charles E. Edwards to complaint
		* * * * *
11/20/00	30	Order by Judge Jack T. Camp granting motion for asset freeze, preliminary injunction and other equitable relief
11/20/00	31	Preliminary injunction order by Judge Jack T. Camp [Entry date 11/22/00]
		* * * * *

DATE	DOCKET NUMBER	DOCKET ENTRY
		* * * * *
12/27/00	49	Notice of appeal by defendant
		* * * * *
1/3/01	53	Amended notice of appeal by defendant
		* * * * *
1/10/02	157	Consent to Final Judgment of Permanent Injunction as to defendant ETS Payphones, Inc.
		* * * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

No. 1:00-CV-2532

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

ETS PAYPHONES, INC. AND CHARLES E. EDWARDS,
DEFENDANTS

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

It appears to Plaintiff, Securities and Exchange Commission ("Commission" or "SEC"), and it alleges that:

OVERVIEW OF DEFENDANTS' SCHEME

1. This matter involves a fraudulent and unregistered offering of securities by ETS Payphones, Inc. ("ETS") and its chief executive officer, Charles E. Edwards ("Edwards") in violation of the registration and antifraud provisions of the federal securities laws. The scheme is based upon purported investments in customer-owned coin-operated telephones, and has raised approximately $300 million from more than 10,000 investors. ETS offers and sells pay telephones with leaseback contracts. Investments are offered and sold in units involving a telephone, site lease, lease/back agreement and buy/back agreement. The investments constitute investment contracts and therefore are securities. The investment program has operated as a

Ponzi scheme, i.e. a scheme whereby returns are paid to investors from monies contributed by later investors.

2. No registration statement has ever been filed in connection with the securities.

3. Selling materials issued to investors state that pay phones are a profitable business. Edwards has represented to investors that ETS is profitable. In fact, ETS is operating in the manner of a Ponzi scheme and is incurring significant net losses from payphone operations.

4. ETS is dependent on the sale of new payphone investments in order to meet its current financial obligations, such as investor lease payments and refunds.

5. An ETS disclosure document given to investors grants the investor the right to sell their payphone back to ETS for the original purchase price. However, ETS does not have the financial resources to purchase the phones if a significant number of investors request refunds.

6. Based on the foregoing, the Commission is seeking an order prohibiting the destruction of documents, preliminary and permanent injunctions, accountings, disgorgement together with prejudgment interest, and civil penalties against ETS and Edwards and an asset freeze as to Edwards, based on violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act"), [15 U.S.C. 77e(a), 77e(c) and 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78j(b)] and Rule 10b-5 [17 C.F.R. 240.10b-5] thereunder.

JURISDICTION AND VENUE

7. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. 77t(b) and 77t(d)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. 78u(d) and 78u(e)] to enjoin the defendants from engaging in transactions, acts, practices and courses of business alleged in this complaint, and transactions, acts, practices, and courses of business of similar purport and object, for disgorgement or illegally obtained funds and other equitable relief, and for civil money penalties.

8. The Court has jurisdiction of this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. 77t(b), 77t(d) and 77v(a)] and Sections 21(d), 21(e) and Section 27 of the Exchange Act [15 U.S.C. 78u(d), 78u(e) and 78aa].

9. The defendants, directly and indirectly, made use of the mails, and the means and instrumentalities of transportation and communication in interstate commerce, in connection with the transactions, acts, practices and courses of business alleged in the complaint.

10. Certain of the transactions, acts, practices and course of business constituting violations of the Securities Act and the Exchange Act have occurred in the Northern District of Georgia, including the solicitation of investors who reside within the Northern District of Georgia. Furthermore, defendant ETS is situated in and defendant Edwards resides within the Northern District of Georgia.

11. The defendants, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices and courses of business and similar purport and object.

THE DEFENDANTS

12. *ETS Payphones, Inc.* is a Georgia corporation formed in October 1994. Edwards owns ninety-nine percent of the ETS shares outstanding. ETS claims that it currently owns or operates 47,000 private payphones in 32 states. ETS's offices are located in Lithia Springs, Georgia, an Atlanta suburb. ETS filed a voluntary petition under Chapter 11 of the bankruptcy code on or about September 11, 2000.

13. *Charles E. Edwards*, age 61 and a resident of Duluth, Georgia, is the founder and chairman of ETS. ETS sales documents state that Edwards has over thirty years of experience building successful sales organizations and that he has spent the last nine years in the telecommunications industry.

FACTS

A. The ETS Investment Program

14. Beginning in or about October 1994 until on or about September 11, 2000, ETS under the direction of Edwards, offered "pay telephone" investments to the general public. Investments were offered in units, which include a pay telephone, a site location, a lease/back agreement, and a buy/back agreement.

15. Each unit was sold for $6,750. ETS received $5,250. The marketing company received the difference.

16. The investments have been sold through various means, including sales agreements with marketing companies. The marketing companies have made arrange-

ments with licensed insurance agents to market and sell the ETS payphones.

17. The marketing companies or their agents have made the sale and ETS and its subsidiary PSA, Inc. has purportedly assigned a payphone to the investor.

18. There has been as much as a three-month lag between the time an investor purchased his payphone until the time he actually was assigned the payphone.

19. ETS manages the operations of the payphones, and currently has approximately 47,000 payphones under management.

20. ETS and the marketing companies have used the mails and other jurisdictional means to market the investments.

21. ETS operates a website which contains statements such as "there are millions to be made from owning pay phones" and describe payphone ownership as "virtually recession-proof" and offering a "steady, immediate cash flow."

22. Many of the investors are elderly. Substantially all have no experience managing payphones and are dependent upon the experience and resources of ETS to obtain the promised return.

23. ETS and the marketing companies have offered three basic programs for payphone purchasers. However, the program recommended by the selling agents and the program that substantially all investors have subscribed to is called the Payphone Equipment Lease Program ("lease program").

24. Under this agreement, the investor purchased a payphone and entered into an agreement to lease the payphone back to ETS for a period of sixty months (the

investor becomes the lessor and ETS becomes the lessee of the payphone). ETS agreed to pay the investor a lease payment of $82 per month per unit over the sixty-month period. These lease payments represent a 15% annual return to the investor, and are to be paid regardless of the revenue obtained from the specific payphone owned by the investor.

25. At the end of the sixty-month period, the investor had the option of renewing the lease or selling the payphone back to ETS for a full refund of the investment amount.

26. ETS also offered a full refund within 180 days of the investor's request during the initial sixty-month period.

27. During the term of the lease, the investors can cancel their leases upon 90 days notice and take possession of their phones.

28. Investors under the lease program have no involvement in the operation of the pay telephone site.

29. ETS manages and maintains the payphones, including interior and exterior maintenance as well as coin retrieval. Title to the phone and all tax advantages purportedly remain with the investor.

30. Under the lease program, ETS has the right to move the phone from one location to another.

31. The second alternative program, which was purportedly available but hardly ever sold, was called the Internal Maintenance Program ("internal program"). Under the internal program, investors would be responsible for external maintenance, including general appearance of the telephone and of the site, as well as collection of the coins. Under this program, ETS would

manage internal telephone monitoring and determine the service needs of the telephone. ETS would be responsible for sending service technicians to make necessary repairs, and for reporting repairs and non-coin revenues (such as from credit cards or telephone cards) to the owners on a monthly basis. ETS would perform these services for a fixed monthly fee. Under this alternative the return to the investor would, at least hypothetically, vary depending on the revenues received by the assigned telephone.

32. As a third option, ETS also purported to offer to sell telephone equipment with no associated agreements. However, this option, like the internal program, was hardly ever sold.

33. The lease program units are securities. ETS has never filed a registration statement with the Commission in connection with the offer and sale of these securities. No exemption from registration is applicable.

34. At least some ETS sales package included a selling brochure and a "Basic Disclosure Document Presented by ETS Payphones, Inc." (the "disclosure document"), which was presented to investors and potential investors at Edwards's direction.

35. The selling brochure includes general information about the payphone industry and includes discussions about the "profitability" of payphones.

36. The disclosure document contains brief descriptions of the company, brief biographies of management, and descriptions of the payphone management options available to investors. It also includes copies of the "telephone equipment lease agreement" and "the option

to sell agreement" to be signed by ETS and the investor.

37. ETS also has a website on the Internet which includes three brief sections describing the business of ETS, the payphone industry generally and the "profitable opportunities" of payphones.

38. The ETS selling brochure contains statements in bold print such as "watch the profits add up" and "why are pay phones so profitable." The selling brochure also contains a table entitled "Incremental Economics of a Medium-Volume Pay Phone" which shows a positive gross margin of $164 per month.

39. On July 1, 2000, Edwards sent a document to investors which represented, among other things, that ETS was profitable. Edwards also verbally represented to investors that ETS was profitable.

40. Unaudited financial statements of ETS as of December 31, 1998, March 31, 1999 and June 30, 2000 reveal that ETS has consistently been in a precarious financial situations and that payphone operations were not profitable. At all times during the course of the scheme, Edwards was aware of the true financial condition of ETS.

41. For example, ETS financial statements prepared in accordance with generally accepted accounting principles revealed that ETS had a stockholders' deficit of $24,493,531 at March 31, 1999 and that ETS had a net loss from operations of $32,033,347 for the fifteen-month period ending March 31, 1999.

42. ETS has continued to lose money on its telephone operations, and specifically lost more than $33 million from its telephone operations during the first six months of 2000.

43. In fact, ETS has consistently been dependent on the sale of new payphones in order to meet its lease and refund obligations.

44. The financial conditions of ETS and its dependency on new investors has not been disclosed to investors.

45. In its lease agreements, ETS contracted to "buy back" the investor's payphone at any time during the first sixty months of the lease term (the "put option").

46. Pursuant to the lease agreements, the investor must notify ETS of his intention to exercise the put option and is promised a full refund of the investment within 180 days of notification.

47. Additionally, an investor can either renew the lease or receive a full refund at the end of the five-year lease term. ETS is obligated to pay the refunds.

48. If a significant number of investors were to exercise their put options or request refunds at or near the same time period, Edwards knew that ETS did not have the cash to make such payments. Edwards knew that fact but it was not disclosed to investors.

49. During the course of the scheme, Edwards has taken at least a $14 million out of ETS through loans and fees paid to companies controlled by him.

CLAIMS FOR RELIEF

COUNT I

Violations of § 17(a) of the Securities Act [15 U.S.C. § 77q(a)]

50. Paragraphs 1-49 are hereby realleged and are incorporated herein by reference.

51. From in or about October 1994 through at least September 10, 2000, defendants ETS and Edwards, in the offer and sale of securities, specifically the above-described securities, by use of the means and instruments of transportation and communication in interstate commerce or by use of the mails,

(a) directly and indirectly employed devices, schemes and artifices to defraud purchasers of such securities;

(b) directly and indirectly obtained money or property by means of untrue statements of a material fact or omissions to state a material fact necessary in order to make the statements made, not misleading; and

(c) engaged in transactions, practices and a course of business which would have operated as a fraud or deceit upon the purchasers of such securities, all as more particularly described in paragraphs 1-49 above.

52. Defendants ETS and Edwards knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud.

53. By reason of the foregoing, defendants ETS and Edwards have violated and, unless restrained and enjoined, will continue to violate § 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

COUNT II

Violations of § 10(b) of the Exchange Act [§ 15 U.S.C. 778j(b) and Rule 10b-5 Thereunder [17 C.F.R. § 240.10b-5]

54. Paragraphs 1-49 are hereby realleged and are incorporated herein by reference.

55. From in or about October 1994 through at least September 10, 2000, defendants ETS and Edwards, by their conduct as set forth above, singly and in concert, by the use of means and instrumentalities of interstate commerce and by the use of the mails, directly and indirectly:

(a) employed devices, schemes, and artifices to defraud;

(b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(c) engaged in acts, practices and courses of business which operated as a fraud and deceit upon persons, all more particularly described in paragraphs 1-49 above.

56. Said defendants knowingly, intentionally and/or recklessly engaged in the above-described conduct.

57. The statements and representations alleged herein were known to defendants or recklessly disregarded by them to be materially false and misleading. In making the material misrepresentations of fact and material omissions described herein, defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud with reckless disregard for the truth.

58. By reason of the foregoing, defendants ETS and Edwards have violated and, unless restrained and enjoined will continue to violate § 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

COUNT III

Violations of § 5(a) and 5(c) of the Securities Act [15 U.S.C. § 77e(a) and 77e(c)]

59. Paragraphs 1-49 are hereby realleged and are incorporated herein by reference.

60. From in or about October 1994 through at least September 10, 2000, defendants ETS and Edwards, directly and indirectly, singly and in concert have, and unless enjoined will continue to:

(a) make use of the means or instruments of transportation or communications in interstate commerce or of the mails to sell the securities described herein, through the use or medium of any prospectus or otherwise;

(b) carry securities or cause such securities, as described herein, to be carried through the mails or in

interstate commerce, by means or instruments of transportation, for the purpose of sale or delivery after sale; and

(c) make use of the means or instruments of transportation or communications in interstate commerce or of the mails to offer to sell through the use or medium of any prospectus or otherwise the securities described herein,

without a registration statement having been filed or being in effect with the Commission; including but not limited to, the activities described in paragraphs 1-49 above.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff Commission, respectfully prays that the Court:

I.

Make findings that each and every defendant committed violations alleged herein.

II.

§ 17(a) of the Securities Act

Issue preliminary and permanent injunctions restraining and enjoining defendants ETS and Edwards, as well as their agents, servants, employees, attorneys and all persons in active concert or participation with them, who receive actual notice of the order of injunction, by personal service or otherwise, and each of them in the offer or sale of any securities by the use of any means or instruments of transportation or com-

munication in interstate commerce or by the use of the mails, from directly or indirectly:

(a) employing any device, scheme, or artifice to defraud;

(b) obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser of such securities.

III.

§ 10(b) of the Exchange Act and Rule 10b-5 Thereunder

Issue preliminary and permanent injunctions restraining and enjoining defendants ETS and Edwards as well as their agents, servants, employees, attorneys, and all persons in active concert or participation with them, who receive actual notice of the order of injunction, by personal service or otherwise, and each of them in connection with the purchase or sale of securities, by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, from directly or indirectly:

(a) employing any device, scheme or artifice to defraud;

(b) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit on any person.

IV.

§ 5(a) and 5(c) of the Securities Act

Issue preliminary and permanent injunctions restraining and enjoining defendants ETS and Edwards, as well as their agents, servants, attorneys, and all persons in active concert or participation with them, who receive actual notice of the order of injunction, by personal service, facsimile or otherwise, and each of them, by use of the mails or any means or instrumentality of interstate commerce, from directly or indirectly:

(a) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, in the form or common stock or any other security, through the use or medium of any prospectus or otherwise, unless and until a registration statement is in effect with the Commission as to such securities;

(b) carrying securities, or causing them to be carried through the mails or in interstate com-

merce, by any means or instruments of transportation, for the purpose of sale or delivery after sale, unless and until a registration statement is in effect with the Commission as to such securities;

(c) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy, through the use or medium of any prospectus or otherwise, any interest in securities, in the form of common stock or any other security;

unless a registration statement is in effect with the Commission as to such securities, or while a statement filed with the Commission as to such security is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under section 8 of the Securities Act. [15 U.S.C. 77h];

in violation of section 5 of the Securities Act. [15 U.S.C. 77e].

V.

Order Prohibiting Destruction of Documents

Orders prohibiting defendants ETS and Edwards, their agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of the orders by personal service, facsimile or otherwise, and each of them, from directly or indirectly, tampering with, mutilating, altering, erasing, concealing, removing, destroying or otherwise disposing of any and all books, records, documents, files, correspondence, computer tapes, computer disks, computer diskettes or any other data recordings or any

type, however created, produced or stored, relating to, pertaining to or referring to the defendants, their officers, directors, employees and agents, or any financial transactions by either of the defendants or to which either of the defendants was a party.

VI.

Order Requiring Accounting, Freeze of Assets And Disgorgement Of Ill-Gotten Gains

Issue Orders requiring an accounting from the defendants of all funds received from the sale of securities described in this Complaint, an order freezing the assets of defendant Edwards and an order for defendants ETS (to be enforced in ETS's bankruptcy proceeding for so long as it is pending or to be enforced in this proceeding in the absence of a pending bankruptcy), and Edwards to disgorge all ill-gotten gains or unjust enrichment with prejudgment interest, to effect the remedial purposes of the federal securities laws.

VII.

Civil Money Penalties

Issue an Order setting the amount of civil penalties against defendants ETS (to be enforced in ETS's bankruptcy proceeding for so long as it is pending or to be enforced in this proceeding in the absence of a pending bankruptcy) and Edwards pursuant to § 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and § 21(d)(3) of the Exchange Act.

VIII.

Other Relief

Issue findings of fact and conclusion of law in accordance with Rule 52 of the Federal Rules of Civil Procedure, along with such other and further relief as may be just, equitable and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors. Further, the Securities and Exchange Commission respectfully prays that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that are entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully Submitted,

/s/ WILLIAM P. HICKS
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IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

No. 1:00-CV-2532

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

ETS PAYPHONES, INC. AND CHARLES E. EDWARDS,
DEFENDANT

ANSWER AND DEFENSES OF DEFENDANT CHARLES E. EDWARDS

Defendant Charles E. Edwards ("Defendant") answers Plaintiff's Complaint for Injunctive and Other Relief ("Complaint") as follows:

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim against Defendant upon which relief may be granted.

SECOND DEFENSE

Plaintiff's Complaint should be dismissed because this Court lacks jurisdiction over the subject matter of Plaintiff's Complaint.

THIRD DEFENSE

Plaintiff's Complaint fails to plead fraud with particularity as required by Rule 9(b) of the Federal Rules of Civil Procedure.

FOURTH DEFENSE

Defendant relied upon the advice of counsel that ETS was not engaged in the offer or sale of securities.

FIFTH DEFENSE

The relief sought in Plaintiff's Complaint is barred, at least in part, by the applicable statute of limitations and the doctrine of laches.

SIXTH DEFENSE

The equitable relief requested in Plaintiff's Complaint is barred by the doctrine of unclean hands.

SEVENTH DEFENSE

Plaintiff is barred from seeking the relief requested by the doctrine of estoppel.

EIGHTH DEFENSE

Defendant, at all times relevant to the allegations contained in the Complaint, acted in good faith and with the intent and desire to comply with the law.

NINTH DEFENSE

Defendant responds to each and every enumerated paragraph of the Complaint as follows:

1.

Defendant denies the allegations contained in paragraph 1 of Plaintiff's Complaint.

2.

Defendant denies that the payphone leases were "securities" as alleged in paragraph 2 of Plaintiff's Complaint, but admits that, because no securities were involved, no registration statement was filed.

3.

Defendant denies the allegations contained in paragraph 3 of Plaintiff's Complaint.

4.

Defendant denies the allegations contained in paragraph 4 of Plaintiff's Complaint.

5.

Defendant denies the allegations contained in paragraph 5 of Plaintiff's Complaint.

6.

Defendant denies the allegations contained in paragraph 6 of Plaintiff's Complaint.

7.

Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 7.

8.

Defendant denies the allegations contained in paragraph 8 of Plaintiff's Complaint.

9.

Defendant denies the allegations contained in paragraph 9 of Plaintiff's Complaint.

10.

Defendant denies the allegations contained in paragraph 10 of Plaintiff's Complaint.

11.

Defendant denies the allegations contained in paragraph 11 of Plaintiff's Complaint.

12.

Defendant admits the allegations contained in paragraph 12 of Plaintiff's Complaint.

13.

Defendant denies that he is 61 years old and denies that ETS has "sales documents" utilized for the sale of securities, and admits the remainder of the allegations contained in paragraph 13 of Plaintiff's Complaint.

14.

Defendant denies the allegations contained in paragraph 14 of Plaintiff's Complaint.

15.

Defendant denies the allegations contained in paragraph 15 of Plaintiff's Complaint.

16.

Defendant denies the allegations contained in paragraph 16 of Plaintiff's Complaint.

17.

Defendant denies the allegations contained in paragraph 17 of Plaintiff's Complaint.

18.

Defendant admits the allegations contained in paragraph 18 of Plaintiff's Complaint, except with respect to the use of the word "investor" which implies that a security was involved, which Defendant denies.

19.

Defendant admits the allegations contained in paragraph 19 of Plaintiff's Complaint.

20.

Defendant denies the allegations contained in paragraph 20 of Plaintiff's Complaint.

21.

Defendant denies the allegations contained in paragraph 21 of Plaintiff's Complaint.

22.

Defendant denies the allegations contained in paragraph 22 of Plaintiff's Complaint.

23.

Defendant is without knowledge or information sufficient to either admit or deny what any "marketing companies" or "selling agents" may have done, and admits the remaining allegations contained in paragraph 23 of Plaintiff's Complaint, except with respect to the use of the word "investor," which implies that a security was involved, which Defendant denies.

24.

Defendant denies the allegations contained in paragraph 24 of Plaintiff's Complaint, except Defendant admits that lease payments are to be paid regardless of the revenue obtained from any specific payphone.

25.

Defendant denies the allegations contained in paragraph 25 of Plaintiff's Complaint.

26.

Defendant denies the allegations contained in paragraph 26 of Plaintiff's Complaint.

27.

Defendant admits the allegations contained in paragraph 27 of Plaintiff's Complaint, except with respect to the use of the word "investor" which implies that a security was involved, which Defendant denies.

28.

Defendant admits the allegations contained in paragraph 28 of Plaintiff's Complaint, except with respect to the use of the word "investor" which implies that a security was involved, which Defendant denies.

29.

Defendant admits the allegations contained in the first sentence of paragraph 29 of Plaintiff's Complaint and denies the remaining allegations of that paragraph.

30.

Defendant admits the allegations contained in paragraph 30 of Plaintiff's Complaint.

31.

Defendant denies the allegations in the first, second, and sixth sentences of paragraph 31 of Plaintiff's Complaint and admits the allegations in the third, fourth, and fifth sentences of paragraph 31 of Plaintiff's Complaint.

32.

Defendant denies the allegations contained in paragraph 32 of Plaintiff's Complaint.

33.

Defendant denies the allegations contained in paragraph 33 of Plaintiff's Complaint.

34.

Defendant denies the allegations contained in paragraph 34 of Plaintiff's Complaint.

35.

Defendant denies the allegations contained in paragraph 35 of Plaintiff's Complaint.

36.

Defendant admits that the "Basic Disclosure Document Presented by ETS Payphones, Inc." contains the matters set forth in paragraph 36 of Plaintiff's Complaint and denies any remaining allegations.

37.

Defendant denies the allegations contained in paragraph 37 of Plaintiff's Complaint.

38.

Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 38.

39.

Defendant denies the allegations contained in paragraph 39 of Plaintiff's Complaint.

40.

Defendant denies the allegations contained in paragraph 40 of Plaintiff's Complaint.

41.

The document speaks for itself. Defendant otherwise denies the allegations contained in paragraph 41 of Plaintiff's Complaint.

42.

Defendant denies the allegations contained in paragraph 42 of Plaintiff's Complaint.

43.

Defendant denies the allegations contained in paragraph 43 of Plaintiff's Complaint.

44.

Defendant denies the allegations contained in paragraph 44 of Plaintiff's Complaint.

45.

Defendant denies the allegations contained in paragraph 45 of Plaintiff's Complaint.

46.

Defendant denies the allegations contained in paragraph 46 of Plaintiff's Complaint.

47.

Defendant denies the allegations contained in paragraph 47 of Plaintiff's Complaint.

48.

Defendant denies the allegations contained in paragraph 48 of Plaintiff's Complaint.

49.

Defendant denies the allegations contained in paragraph 49 of Plaintiff's Complaint.

COUNT I

50.

Defendant incorporates by reference his above responses to the allegations contained in paragraphs 1-49 of the Plaintiff's Complaint.

51.

Defendant denies the allegations contained in paragraph 51 of Plaintiff's Complaint.

52.

Defendant denies the allegations contained in paragraph 52 of Plaintiff's Complaint.

53.

Defendant denies the allegations contained in paragraph 53 of Plaintiff's Complaint.

COUNT II

54.

Defendant incorporates by reference his above responses to the allegations contained in paragraphs 1-49 of the Plaintiff's Complaint.

55.

Defendant denies the allegations contained in paragraph 55 of Plaintiff's Complaint.

56.

Defendant denies the allegations contained in paragraph 56 of Plaintiff's Complaint.

57.

Defendant denies the allegations contained in paragraph 57 of Plaintiff's Complaint.

58.

Defendant denies the allegations contained in paragraph 58 of Plaintiff's Complaint.

COUNT III

59.

Defendant incorporates by reference his above responses to the allegations contained in paragraphs 1-49 of the Plaintiff's Complaint.

60.

Defendant denies the allegations contained in paragraph 60 of Plaintiff's Complaint.

PRAYER FOR RELIEF

Defendant denies that Plaintiff is entitled to any of the relief sought in paragraphs numbered I, II, III, IV, V, VI, VII, or VIII.

DEMAND FOR JURY TRIAL

Defendant demands a trial by jury for all matters triable by jury.

WHEREFORE, Defendant Charles E. Edwards, having fully answered Plaintiff's Complaint, respectfully requests judgment be rendered in his favor as to all allegations of the Complaint and that he be awarded attorneys fees and other costs and expenses, as well as such other and further relief as this Court deems just and appropriate. Defendant reserves the right to assert additional defenses as discovery progresses in this action.

Respectfully submitted,

KUTAK ROCK LLP

By: /s/ MICHAEL K. WOLENSKY
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Attorneys for Defendant
Charles E. Edwards

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

No. 1:00-CV-2532-JTC

SECURITIES AND EXCHANGE COMMISSION

v.

ETS PAYPHONES, INC.; CHARLES E. EDWARDS,
DEFENDANT

TRANSCRIPT OF PRELIMINARY INJUNCTION
PROCEEDINGS BEFORE THE HONORABLE
JACK T. CAMP UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

WILLIAM P. HICKS
EDWARD GARY SULLIVAN
SUSAN SHERRILL
ATTORNEYS AT LAW

FOR THE DEFENDANT EDWARDS:

MICHAEL K. WOLENSKY
ANGELA B. MIELE
ETHAN H. COHEN
ATTORNEYS AT LAW

FOR THE DEFENDANT ETS:

SCOTT SORRELS
SHARON NAGLE
ATTORNEYS AT LAW

* * * * *

[15]

OPENING STATEMENT

BY MR. WOLENSKY.

* * * * *

[17]

Now, there is no allegation here of misappropriation from this company. The SEC says companies controlled by Mr. Edwards got some loans from the debtors. Companies—

THE COURT: Interest free loans, I think was the allegation.

MR. WOLENSKY: I'm sorry?

THE COURT: I believe interest free loans was the allegation.

MR. WOLENSKY: Interest free loans. Mr. Edwards owns all of these companies 100 percent, although there is a dispute about somebody owning a portion of ETS. And that matter is in litigation. But he is the 100 percent shareholder, virtually 100 percent shareholder of all of these companies. And these interest free loans, for the most part, you will hear testimony about that, went to one entity called Twin Leaf, which is a management and holding company, and it has certain subsidiaries that provides support services to the ETS companies. And you will hear how those loans were used. But there is certainly no allegation of misappropriation. Everything is on the books and records of the company. There is no allegation of a secret taking of funds. There is no allegation of looting. There is no allegation of extravagant lifestyles. Everything Mr. Edwards owns is either real

estate or in his businesses. He doesn't even have a brokerage account.

* * * * *

[29]

DAVID CRUMPTON

PLAINTIFF'S WITNESS

SWORN

DIRECT EXAMINATION

BY MR. HICKS:

* * * * *

[31]

Q. Judge, I tender Mr. Crumpton as an expert on the financial viability of companies, the general and financial statements of ETS.

* * * * *

[36]

MR. WOLENSKY: Your honor, I would submit, in light of the defendant's lack of training in the area, the lack of authoritative support for the opinions, and the lack of peer review, that expert testimony under the kwomo tire test is not available for this witness, and we would urge the court not to consider him an expert and not accept his testimony.

THE COURT: Mr. Hicks?

MR. HICKS: Judge, I would point out he has had 30 years of doing nothing but this essentially, and I think that makes him, with all his training, makes him more than a sufficient expert to evaluate a set of financial statements.

THE COURT: I am going to overrule your objection, Mr. Wolensky. I think the witness is well-qualified to review the finances and financial statements of the company, and offer his opinion as to whether they are viable in the sense that he defines viability, and has done that over the years. All right.

* * * * *

[39]

Q. What were the totals related to the payphone operations for 1999 and for six months of 2000?

A. For this 18–month period combined, the company had operating revenues from calling operations of about $76 million. The telephone calling operations expenses for this same period was approximately $74 million, which is about 96 percent of revenue.

The company had lease payments to investors during this 18–month period of $52 million, which is about 68 percent of revenue, and had G & A expenses, general and administrative expenses, of about $25 million over this 18–month period which is about 33 percent of revenue. The total cost and expenses that I just listed amount to about $151 million, or 197 percent of the telephone calling operations revenue, thus their losses from these operations is in the range of $74- to $75 million for a negative operating loss of 97 percent of revenue.

Q. If you just isolate, for example, the first six months of the year 2000, what was the loss over that period?

A. The loss over that period was $33 million on revenue of $29 million.

Q. Now, the company also had, did it not, revenue from sales of payphones?

A. It did.

Q. And was what that revenue?

A. For the 18–month period, the company had revenue from payphone sales of approximately $177 million, the cost which I could identify as being cost and expenses associated with the payphone sales, including refunds of leases, was approximately $88 million. So the profits from the payphone sales would equate to $88- to $89 million, or about a 50 percent gross margin, if you want to think of it that way.

Q. Now, to be clear, we are not talking about GAAP or NonGAAP here; correct? We are talking about cash?

A. That is essentially correct. This is not—these are based on the internally prepared financial statements which report payphone sales revenue at the time, essentially, at the time of the transaction itself. The only noncash piece of this that I am aware of would be some relatively minor amounts of depreciation and amortization. And relatively minor, we are talking about perhaps $1- or $2 million.

Q. Now, do you have an opinion with reasonable certainly as to whether the payphone operations, without the input of additional revenues from new sales of payphones, are or have been viable at any time?

A. Certainly for this 18–month period, the payphone operations is a losing–money proposition. The revenues itself as compared to just the cost of the operations and the cost of the lease payments, ignoring G & A completely, is a substantial loss. Perhaps over the 18

months looks like perhaps $50 million loss on $76 million of revenue.

Q. Do you have an opinion with reasonable certainty as to whether ETS was dependent on sales of payphones to new investors to stay afloat?

A. Yes, they were dependent on such sales. In reviewing the company's financial statements, they really had no other significant source of cash coming in the door to stay in business.

Q. Now, is ETS insolvent?

A. Yes, it is.

Q. Can you explain why?

A. This might be an appropriate point to digress and talk about GAAP and NonGAAP. The company's internal financial statements record the sales of the payphones, and the cost and expenses of the payphone sales basically at the time of sale; therefore, they had over this 18–month period about $88 million of profits from payphone sales. Under Generally Accepted Accounting Principals, that accounting treatment is inappropriate and misleading.

Under Generally Accepted Accounting Principals the accountant's, financial accountants's standards board concluded many years ago that these are not sales transactions at all in the economic substance, even though the legal form of it is a sale and lease back. The accounting profession concluded that in fact these are really loans from the investors to the company.

* * * * *

[44]

Q. Did the financial statements indicate any funds transferred to affiliates of the company?

A. They did.

Q. Can you tell us what they reflect?

A. The balance sheet as of June 30th showed accounts receivable due from affiliates of $11.6 million, and investments in subsidiaries of $6.1 million of 6.2 for a total of $17.8 million invested in or advanced to related parties or affiliates at that date.

Q. Is that item identified on any of the financial statements in the notes?

A. The footnotes to one of the financial statements, I believe it was the March 31, 1999 financial statements, indicated that these affiliates were companies controlled by the primary shareholder of ETS, that the loans are noninterest bearing, they are due on demand, and that the affiliates themselves did not have the cash to repay the borrowings.

Q. In addition to those, did the financial statements reflect the payment of fees to affiliates?

A. The footnotes to these March 1999 financial statements indicated that there was a fee paid to one of these affiliates starting January 1, 1999 of $250 for each payphone unit sale. Previous to January 1 of 1999 that figure was $150. The amount paid to affiliates as disclosed in these financial statements for the 15–month period ended March 31, 1999 was $3.1 million. I could not separately identify these fees to affiliates in the subsequent financial statements.

MR. HICKS: I have nothing further from this witness.

THE COURT: Mr. Wolensky?

CROSS-EXAMINATION

BY MR. WOLENSKY:

Q. Mr. Crumpton, you said that the amounts of these loans and fees, those are shown in the financial statements; correct?

A. The loans and to affiliates and to investments in subsidiaries are shown on the face of the balance sheet. The fees are disclosed in the footnotes to the March 31, 1999 financial statements.

Q. And those are financial statements that you got from the SEC; Right?

A. That is correct.

Q. Do you know where the SEC got them?

A. I don't. They were compiled, however, by independent accountants, the Leventhal and Horath firm.

Q. Did you ask—well, you said you didn't ask the company for any information, so you didn't try to find out the detail about this before you testified, did you?

A. I used the documents that were available to me. I did not contact the company and have had no contact with the company.

Q. Now, you testified a few minutes ago that there is some $177 million of recently acquired, in the last 18 months of so, of payphones that were acquired that are under lease that the company has agreed to repurchase on—that's the 180–day notice; is that correct?

A. That is correct. $177 million represents the total of the payphone sales revenue for the 18–month period ended June 30, 2000.

Q. So as an accountant you say, well, they sold $177 million, and they have—or that they've got—so they have an obligation of $177 million because they may have to buy them all back? I mean, that's how you account for that?

A. That is how the accounting profession treats those kinds of transactions.

Q. Do you know what the historical liquidations—you understand that over the years they have been about 1 percent; is that correct?

A. I don't know the historical percentage.

Q. Did you ask the SEC what it was?

A. No, and it is not really relevant from the standpoint of the treatment in the financial statements as current liabilities.

Q. Is it relevant for how the company looks at its business and how much money it is going to have to have to pay liquidations to look at what the historical record has been and how many it may have to liquidate in any given year? If you were running a business, you would want to know that, wouldn't you?

A. Yes. As long as there were sufficient resources to continue in business. If there are not sufficient resources to continue in business, then the historical percentage buy-back of the payphone units would not necessarily hold up.

Q. Well, let's talk about that a minute. Now, at one point you said, in response to Mr. Hick's question, that

this company was dependent on payphone sales to new investors to stay afloat.

A. Correct.

Q. Well, you understand this company doesn't sell—ETS doesn't sell payphones to investors. You understand that, don't you?

A. I understand that they sell through distributors who resell to the investors.

Q. Don't you understand that the subsidiary PSA sells phones to distributors, and I think you gave the number of about $5300; right?

A. That is the number that was disclosed in the rescission offer to the Pennsylvania residents.

Q. Do you have any reason to doubt the accuracy of that number:

A. No.

Q. And then the distributors sells that phone or sells the phone, you said it is something like $7,000 to an individual; correct?

A. Yes. And those numbers, as I understand it, have changed over the course of the company's history. The $7,000, however, it was the number disclosed in the November of 1999 rescission offer, and would presumably be pretty current.

Q. And it's gone from $5,000 to $6,000, to $7,000. Is that what you understand?

A. Along those lines.

Q. So the sales that are made by PSA are made to distributors; correct?

A. I am not familiar with the PSA relationship. I do know that the sales are made through the distributors who resell to the investors, as I understand it.

Q. You understand that ETS doesn't sell payphones, don't you?

A. I understand that ETS is recording payphone sales revenue.

Q. ETS and subsidiaries; correct?

A. That is probably correct.

Q. Is there any reason why this company that you know of is required to maintain its internal financial statements using GAAP accounting convention?

A. Internally the company has flexibility to report as it sees fit.

Q. Is this company a public company, as far as you know?

A. Not as far as I know?

Q. It doesn't file reports with the SEC, does it?

A. Not that I am aware of.

Q. And the statements you have seen, the financial statements given you by the SEC, did the SEC advise you those were internal financial statements?

A. Yes.

Q. So if the company chooses to look at its business on a realistic basis, basically a cash basis, as Mr. Hicks called it, money in/money out, and obligations that are set up, that's up to the company to do that to guide its future business; correct?

A. The company can use the cash method if it's so chooses without violating any accounting principles insofar as disclosures, public disclosures.

* * * * *

[52]

Q. You do understand that the distributors in this are not affiliated with ETS in any way?

A. That is my understanding.

Q. Do you also understand once a payphone is purchased the payphone purchaser has the opportunity to select any management company they choose, or to manage it themselves?

A. Yes. I understand that to be an option, however, the company's disclosure in the Pennsylvania rescission indicated that most did not elect those options.

Q. Well, most, from the ones involved here, but there are many other payphones owners that have locations other than those dealing with ETS; correct?

A. Of these people? Of ETS customers? Or just generally.

Q. No. In general. It is a very large business; correct?

A. Yes. There are—right. Yeah. There are many other payphone operators.

* * * * *

[53]

Q. Do you understand that ETS has contracts with numerous well-known convenience stores, gas stations,

and companies like that to place payphones at their locations?

A. At site locations?

Q. Yes.

A. Yes, I assume that they did.

Q. Do you know they have thousands of sites out there where they have payphones and they have a large operation of people going out and collecting money and servicing phones; you understand that, correct?

A. Yes. That makes sense.

* * * * *

[57]

CHARLES EDWARDS

PLAINTIFF'S WITNESS

SWORN

DIRECT EXAMINATION

BY MR. HICKS:

A. Charles Eller Edwards.

[58]

Q. Good afternoon, Mr. Edwards. Mr. Edwards, you are, for all intents and purposes the owner of ETS; are you not?

A. Yes, sir.

Q. All right. And you are currently the chairman of the board of ETS?

A. Yes.

Q. And previously you were the CEO of ETS; correct?

A. Correct.

Q. Over what period were you the CEO?

A. Up until approximately four months ago.

Q. From when?

A. From the date we started, which was 1994.

Q. All right. There is also a company called PSA; Correct?

A. Correct.

Q. Is that a wholly-owned subsidiary of ETS?

A. Yes.

Q. What that also under your control?

A. Yes.

Q. Was PSA the entity that technically sold the telephone?

A. They wholesale the phones to the distributors. Yes, sir.

Q. Now, in your capacity as CEO, were you familiar with the sales literature that ETS used?

A. ETS only used sales literature when it went out to obtain locations to put phones. We never sold any pay phones nor did we put out any sales literature to sell payphones.

[59]

Q. Let me show you a document, a copy of which is Exhibit 17. Have you ever seen this document?

A. Yes, sir, I designed it. This was given to people like Diamond Shamrock, or The Circle K, or The Mom and Pop on the corner when we were trying to establish the right to put a phone at their location.

Q. Were you aware that the distributors were using this, a document very similar to this to sell the phones?

A. They were using a similar document that they designed. Yes. But if they were not using that document, not to my knowledge.

Q. You saw their documents also, though, didn't you, sir?

A. Yes, sir.

Q. Were you aware of the financial condition of ETS throughout your tenure as CEO?

A. Yes, sir.

Q. Were you aware, for example, of the amount of revenues coming in from payphone operations versus sales of payphones?

A. Did you hear Mr. Crumpton discuss various financial statements this morning?

Q. Yes, sir.

A. And isn't it a fact that those financial statements were provided to the SEC by ETS?

Q. Yes, sir.

A. Were you also aware that you that ETS was dependent on new investors to sustain its operation?

[60]

A. Yes, sir. As we were set up at that point, yes, sir.

Q. Were you aware that ETS did not have the resources to make good on the puts, if a substantial number of investors chose to make a put, sell the phone back?

A. No, sir, because we had payphones backing up the lease, we had the ability to take those phones to the marketplace and sell them, so we did have the ability to raise funds to, other than the sales, to liquidate the phones.

* * * * *

[62]

Q. Are you the owner of Twinleaf?

A. Yes.

Q. Are you the sole shareholder?

A. Yes.

Q. What does that company do?

A. The company is a management company, that when we saw the revenue dropping two or three years ago in the payphone industry, we chose to diversify to be able to support ETS with products and services that would generate additional revenue as we saw coming down from our payphones. It is a full aixe carrier, legend communications, which is certified to do long distance in 49 states which carries all of the long distance on our ETS phones, and all of our corporate offices. It has a company called TPL which manufactures prepaid calling cards which we sent to each of our payphone owners, a 20-minute prepaid calling card with out check every time, plus they are [63] sold to convenience stores that we have phones in. We have Twin Lead Media, which is—we have a patented—

THE COURT: Excuse me, Mr. Edwards. Tell me again what the name of the company is.

THE WITNESS: Twinleaf, Inc.

THE COURT: Twinleaf:

THE WITNESS: Yes, sir. One word.

THE COURT: Thanks. Excuse me for interrupting you. Go ahead.

THE WITNESS: We have Twinleaf Media, which is a patented kiosk for backlit illumination of advertising on our payphones, which we have contracted with a number of our major chains to put in, mainly in our convenience stores. We have a company called Axis, which is a patented 3-D advertising. We are doing all of the BP and Amoco fountain centers 5,000 stores now, plus we do advertising on the side of the payphones of 3-D imaging. We have—we did have liberty motor sports, which has since been sold that advertised ETS on the NASCAR track. I am trying to remember if I got everything.

Q. Twinleaf is not owned by ETS, is it?

A. No, sir. It was set up—it was designed to support ETS. It was set up mainly for taxes. We have been in discussion with legal and accounting over the last six months prior to this ever happening to consolidate them all in one company, but to go forward with it, because they were designed for ETS's—

[64]

Q. Has Twinleaf borrowed money in ETS?

A. Yes, sir.

Q. What is the current outstanding balance?

A. Approximately $8.1 million.

Q. Are those interest-free loans?

A. Yes, sir.

Q. Are they demand loans, in essence?

A. Correct.

Q. Have any other entities owned by you, separate from the ones in bankruptcy, borrowed money from ETS?

A. The different companies within Twinleaf – not from ETS, no, sir.

Q. Or from PSA?

A. No, sir.

Q. Have they borrowed it from any subsidiary of ETS?

A. Legends may have. I don't know that for a fact, but Legends may have borrowed from PSA or ETS. I don't know for sure, but that would be the only one that I could consider would have.

Q. Did Twinleaf also receive fees from ETS?

A. Yes, sir.

Q. And how much—what is the total of that amount, as close as you can come?

A. We received $250 per phone, my staff. We were not on ETS or nor PSA's payroll. All of my staff, including legal, was all on Twinleaf's payroll; 90 percent of our time was spent managing and [65] working with ETS and PSA and the other companies.

Q. All right, sir, my question was, what was the total amount of fees that Twinleaf received from ETS?

A. I truly don't know, sir. I heard the gentleman say $3 million up here for the last 18 months. I would say that is fairly close.

Q. That was as of March of 1999. Would there be another million or two on top of that since that time?

A. I—we got paid up until we quit selling, and our income stopped when we voluntarily to quit selling, yes, sir.

Q. Did ETS also make investments in Twinleaf or any of those entities?

A. No, ETS made its investments in ETS vending, which is a company that puts out ATM's, and air, and air and vac machines in the convenience stores where we have payphones, and it also invested in POA, which is our limited partnership that owns the phones we have in Mexico.

Q. You mentioned Twinleaf Media. Is that the company that sells advertising kiosks?

A. No, it doesn't sell advertising kiosks. The kiosks are on ETS payphones or other payphones, and it sells the advertising that goes in these kiosks.

* * * * *

[66]

Q. What are Twinleaf's current assets?

A. Well, it wholly owns Legends—are you talking about actual or value?

Q. Value.

A. I would say approximately $13 to $15 million at actual costs.

Q. Now, how much of it that liquid, in cash and securities?

A. Very little of it would be liquid.

Q. So what is the bulk of it made up of?

A. Of actual businesses, operating businesses.

Q. Do any of your entities or yourself own an airplane?

A. No, sir. We leased a plane last year as a third party, three people leased a plane for approximately six months.

Q. What type of plane was that?

A. A Citation II.

Q. Is that a prop plane or a jet?

A. A jet plane.

[67]

Q. Who was it in particular that leased that plane?

A. Actually it was leased by Air Holdings, which is another wholly-owned subsidiary of Twinleaf, and with two other partners, Bullet Bob Turley, the Yankee ex-pitcher, was a partner and Chip McPhearson of Nations Development was the other third party that leased the plane.

Q. And you had a NASCAR racing team also?

A. Yes, sir.

Q. I would like to go into your current assets for a minute. How many houses do you own?

A. Four.

Q. Where are those houses?

A. Actually I own three, I'm sorry. We have one in Kingsport, that is my wife and I do; we have one on Sea Island; and one on St. Simons.

Q. Does your wife own any other houses besides those?

A. Yes. She owns a home in Duluth.

THE COURT: A home where?

THE WITNESS: In Duluth.

BY MR. HICKS:

Q. When were those homes purchased?

A. 1998. And—I think all three of them was purchased in 1998.

Q. About how much—what is the value of each of the houses?

A. The house on Sea Island, which is up for sale, which was an [68] investment, is for sale for $4.2 million. The house on St. Simons, which is also for sale, is 2.95.

Q. Million?

A. 2.95 million. And the one in Kingsport is $185,000.

Q. How about your wife's house? When was that purchased?

A. In 1996 or 1997.

Q. What is the value of that?

A. $6— or $700,000. I think it was bought for $610,000.

Q. All right. Do you have any cash or securities, liquid assets?

A. No. I have probably, cashwise, $2- or $3,000. I have my 401k, a SEP IRA 401, is basically all the cash I have.

Q. How much cash do you have in those accounts?

A. Approximately $21- or $22,000 in the 401; I have $23,000 in the SEP IRA—no, I'm sorry, it's got ap-

proximately $29,000. And I also do have approximately $27- or $28,000 cash value life insurance policy also.

Q. How much money did you personally take out of Twinleaf?

A. Last year?

Q. No. Over the course of the ETS operation.

A. The majority of my income came out of Twinleaf this year. Last year I took approximately $1.3 million out of Twinleaf, and this year I would have taken, for ten months—nine months. I'm at $360,000 a year, and I've got nine months of that pay.

Q. How about in 1998?

[69]

A. In 1998 it would be a combination of ETS and Twinleaf. It was approximately $900,000.

Q. You've attached to your affidavit a number of legal opinions.

A. Yes, sir.

Q. How many other law firms did you consult with on the subject of whether it is a security, other than what you've included here?

A. When I first started I worked with a gentleman by the name of Glenville Haldi. Then I worked with Shelley Freeman were the two initial ones I worked with. And then when—I am trying to think—Tom Sherman. I don't know which law firm he is with right now. But I had an opinion from Tom Sherman, then had an opinion from Powell Goldstein also.

Q. You have an opinion from Powell Goldstein or a draft?

A. A draft of an opinion. I'm sorry.

Q. Now, is it your testimony, based on your—based on your affidavit, that at some point some representative of the SEC told you that what you were doing didn't involve the securities laws?

A. No, sir. I did meet with a gentleman with the SEC that made a couple of recommendations to us that we did in fact do, and he said if we did those we would never hear from a regulatory agent, which of course is not true, and that was to give our lessors more control over their asset, and to either diversify [70] myself from the marketing or the leasing, because at that time I controlled both.

Q. Was that your conversation with Mr. Grant?

A. Mr. Larry Grant, yes, sir.

Q. When did this take place?

A. 1995.

Q. How big was your company at that time?

A. I would say we had 2 or 300 payphones at that time.

Q. I take it there was no discussion about Ponzi schemes or anything like that, was there?

A. No, sir.

* * * * *

Q. All right. Would it be true, I guess consistent with your prior testimony, that a 99 percent of the people who rent phones from PSA went into the lease back arrangement.

A. No, sir. But if you restated that a bit, it might be true.

[71]

Q. How would you restate it?

A. Ninety-nine percent of the phones that were sold by the distributors chose to lease phones with ETS.

Q. And just to be clear, when you talk about the distributors, you are talking about these insurance agents and people that sold the things on your behalf?

A. They were independent marketing people that sold a multitude of different products.

* * * * *

CROSS-EXAMINATION

BY MR. WOLENSKY:

Q. Mr. Edwards, I would like to address a couple of items that were raised initially here by Mr. Hicks. Now, is your wife an independent business person?

A. Yes.

Q. She had a business of her own, and had her own income?

A. Absolutely.

Q. And she bought this property with her own money?

A. Yes.

* * * * *

[74]

Q. Mr. Edwards, in connection with the business of ETS, how many employees have you got?

A. Approximately 450.

Q. And how many locations does the company have offices to service telephones?

A. We have 33 offices in the United States, one in Puerto Rico, one in the Virgin Islands, one in St. Thomas, and four in Mexico. And we have approximately 100 employees in Mexico in addition to that, too.

* * * * *

[77]

Q. Can you explain to the judge, please, the types of services, management services, that Twinleaf provides to ETS and PSA?

A. On the legal side, our inhouse counsel worked for Twinleaf so it could advise all the companies. Then, myself, I was the, up until four months ago, I was the CEO and I helped run the day-to-day operations of ETS. I am the CEO and president of PSA.

We—my assistant handled all the cash in from the marketing groups when they purchased equipment, and then she made sure it went to the proper departments, and then she verified with accounting every two weeks when we did lease [78] checks that the proper checks were sent out, and it was tallied. A check and balance system, is what I am trying to say. And it was just overall management. Ninety percent of all my time was spent with ETS and PSA, and ten percent with the other companies that we had.

Q. And this management fee was the management fee that covered all of the services provided over the several years that a telephone might be under lease; is that correct?

A. Correct.

Q. So if the management fee was $250 for a phone, and that phone—

THE COURT: Was that the management fee?

MR. WOLENSKY: That is the current one, your Honor. It was $125.

BY MR. WOLENSKY:

Q. And when was that raised to 250, Mr. Edwards?

A. The first of this year.

Q. The 1st of 2000?

A. Yes.

Q. So currently that $250, if that phone were to stay under lease for five years, all of the management services provided by Twinleaf over that five-year period would be covered in that $250, or about $50 a year; correct?

A. Correct.

Q. Was that the normal expected time of a lease, five years?

[79]

A. No. And I am giving you a personal opinion working based on working with the lessors. We felt the term of our lease would run closer to ten years because I've gotten numerous calls where they wanted to extend their lease prior to even getting to near five years, because we always paid and paid on time.

Q. May I have just one moment, Your Honor?

(PAUSE).

MR. WOLENSKY: That is all I have of Mr. Edwards for now, Your Honor.

* * * * *

[81]

LARRY GRANT

PLAINTIFF'S WITNESS

SWORN

DIRECT EXAMINATION

BY MR.HICKS:

A. Joseph L. Grant.

Q. Good afternoon, Mr. Grant. You were formerly an attorney with the SEC?

A. I was.

Q. And when did you leave?

A. Three years ago, in 1997, August.

Q. And now at some point approximately five years or so ago did you have a meeting or meetings with Mr. Charles Edwards related [82] to a payphone business?

A. I did.

Q. Did you at any time advise him that what he was telling did not involve the sales of security?

A. I certainly did not. As a matter of fact, I indicated that it was my opinion that they were offering an investment contract when he first came in.

Q. Did you offer him any opinion that if he did this or he did that that he would not have any trouble from regulators or that it would be a security?

A. No, I did not.

MR. HICKS: Just a minute, Your Honor.

(PAUSE).

BY MR. HICKS:

Q. Did you have any indication at the time—first of all, did you get any financial information about the company at the time?

A. Did I get any financial?

Q. Yes.

A. I'm not sure. They did provide material. They were cooperative when he came in. I think he came in the first time by himself, and then at a couple of subsequent meetings he was represented by an attorney.

Q. All right. Did—was there any indication at that time that the company was or was going to operate as a Ponzi scheme?

[83]

A. No. Not to my recollection. As a Ponzi scheme? Not to my recollection.

Q. And in fact, how big was the company in terms of the amount of payphones that was represented to you at the time?

A. It was very nominal at that particular time. If I recall, I don't think they had more than 30 investors. If I recall, they were—they had some, to the best of my recollection, they were registered with—either with some state authority, I believe, and had some materials that they were providing to their proposed investors.

Q. Did they indicate to you that they were going to stop selling the investment?

A. They came in subsequently and the attorney said that Mr. Edwards was going to engage solely in the sale

of the telephones, and not be involved in the other activities which, in my view, made it an investment contract, which was that they were finding the locations, they were putting the phones in, and servicing the telephones for the investors, so that the investor was merely passive, he simple provided the money for the telephone, although they said that the investor could decide where he wanted to put the telephone himself and arrange for all of his own activities.

Q. So they represented to you they were not going to do all of those collateral activities?

A. That is correct.

[84]

MR. HICKS: No Further Questions.

CROSS-EXAMINATION

BY MR WOLENSKY:

Q. Mr. Grant, when you handled this inquiry was there a file opened on it?

A. An informal, probably MUI, as we called it, Matter Under Inquiry.

Q. Were materials gathered from the company and other places?

A. To the best of my recollection, they provided some materials, I think a list of people that they had obtained monies from for telephones. And as I said, I recall, for some reason, some materials that they had put together, kind of like an offering of materials.

Q. And when you left the SEC you left that file?

A. Yes.

Q. As far as you know, the—

A. I didn't take any files with me.

Q. As far as you know, the SEC still has that file?

A. As far as I know.

Q. Now, the discussion that you had, you understood that there was going to be a split so that the company would not be both engaged in sales and in management of phones. Was that you understanding?

A. That is what the attorney represented.

Q. And in your view would that have eliminated the problem of [85] this being, as you said before, possibly an investment contract?

A. Not necessarily. No.

Q. Did you—

A. I told them that the mere fact that I wasn't recommending any action at that particular time did not mean that they were in compliance with the securities laws, and emphasized, as I normally did in preliminary inquiries, that even if they didn't have to comply with the registration provisions, that there was no exemption from the anti-fraud provisions of the federal securities laws.

* * * * *

[86]

Q. Did the SEC take any action against Mr. Edwards at that time?

A. Not to my knowledge.

* * * * *

[89]

JAMES D. BLYTH

DEFENDANT'S WITNESS

SWORN

DIRECT EXAMINATION

* * * * *

[92]

THE COURT: And why in the years of 1993 and 1994 and 1995 was there an apparent expansion of companies in the payphone business?

THE WITNESS: Primarily I believe, Your Honor, due to the 1996 Telecommunications Act. And as part of that act the FCC and their regulations promulgated compensation for dial-around calls, which are 800 calls originated from public payphones. And in the original order the FCC intended for the long distance carriers to pay $45.85 per payphone per month as a surrogate rate while all of the details were being worked out for the per-call compensation. And I think that's the primary reason that there was a proliferation of public payphones during that period of time.

THE COURT: Okay. Who owned the public payphones [93] prior to that time?

THE WITNESS: In 1984, as part of the divestiture, prior to that time, prior to 1984, all of the public payphones were owned by the regional Bell operating companies. As a result of Judge Green's decision, breaking up the Bell operating companies, it allowed for competition.

Between 1985 and 1987 the—we call the Cocot industry, or private independent payphone operations, started up in this country, and there have been a number of companies that have spawned out of that over that period of time. And the overall picture, there is about two-and-a-half million public payphones prior to divestiture, and now there is about 600,000 that are independently owned, and the rest are owned by the regional Bell operating companies.

* * * * *

[PLAINTIFF'S EXHIBIT 1]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

No. _____

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF

v.

ETS PAYPHONES, INC., DEFENDANT

DECLARATION OF DAVID H. CRUMPTON

I, David H. Crumpton, declare pursuant to the provisions of 18 U.S.C. 1746:

1. I am a Certified Public Accountant who maintains a current license in the State of Georgia. I am a member of the American Institute of Certified Public Accountants and the Georgia Society of CPAs; however, I am not currently engaged in the practice of public accounting.
2. I am a Principal and the Chief Financial Officer of Newleaf Corporation. In that capacity, I have extensive engagement experience as forensic accountant, receiver, bankruptcy examiner, financial advisor to bankruptcy trustees, and

other financial consulting services to financially distressed and/or bankrupt business enterprises.

3. My office address is 2810 Spring Road, Suite 106, Atlanta, Georgia 30339. My telephone number is 770-433-9400.

4. I have been asked by the staff of the Securities and Exchange Commission to assist it in providing review and analysis of various financial statements and other documentation provided by ETS Payphones, Inc. ("ETS").

5. I have first hand knowledge of the contents of this declaration.

6. In connection with my duties in conjunction with this matter, I reviewed and analyzed the following unaudited financial statements (the "Financial Statements") of ETS:

   a) Unaudited financial statement (labeled drafts) for the year ended December 31, 1998 compiled by independent accountants;

   b) Unaudited financial statements for the fifteen month period ended March 31, 1999 compiled by independent accountants;

   c) Internally prepared, unaudited financial statements for the year ended December 31, 1999; and

   d) Internally prepared, unaudited financial statements for the six months ended June 30, 2000.

7. I have not independently verified the accuracy or validity of the numbers and other information included in the Financial Statements.

8. ETS is engaged in the sale of payphone units ("PPUs"), and ETS leases the PPUs back from the purchasers/lessors (the "Lessors") over five (5) year lease terms. The leases require ETS to pay lease payments to the Lessors on a monthly basis. The lease agreements provide that the Lessor has a "put" option to require ETS to repurchase the PPU at any time during the term of the PPU lease upon 180 days notice for the Lessor's original purchase price.

9. The ETS Financial Statements (except those financial statements for the fifteen month period ended March 31, 1999) show the funds received from the PPU sales to Lessors as income in the accounting period in which the related PPUs are placed in service. This method of accounting does not conform with generally accepted accounting principles which require that the sale and leaseback of the PPUs be treated as capital leases in the Financial Statements. Under the capital lease method of accounting, lease obligations are shown in financial statements as financing arrangements whereby the PPU assets and a corresponding capital lease obligation liability are recorded on the balance sheet in the amount of the discounted present value of the lease payments based on the annual interest factor inherent in the lease. Further, this method of accounting does not permit the cash receipts from the PPU sale transactions to be treated as revenue or as income. (The financial statements for the fifteen month period ended March 31, 1999, purport to conform with gen-

erally accepted accounting principles and follow the capital lease method of accounting.)

10. ETS operates and services the operations of PPUs, retains for its own account all of the telephone calls operating revenues, and pays from its own account all of the PPU maintenance and operating expenses.

11. The total operating revenues of ETS from sources other than initial PPU sale transactions (i.e., primarily its telephone calling operations) amounted to ($ in thousands):

	Calendar 1999	6 M/E 6/30/2000
Operating Revenues	$ 47,381	$ 29,255

12. The total operating costs and expenses of ETS (including general and administrative expenses, but excluding route purchases, equipment purchases, lease refunds, and other costs of initial PPU sale transactions) amounted to ($ in thousands):

	Calendar 1999	6 M/E 6/30/2000
Telephone calling operations expenses	$44,538	$29,166
Lease payments	29,517	22,903
General and administrative expenses	14,715	10,449

Total operating costs and expenses	$ 88,770	$ 62,518

13. The Financial Statements indicate that ETS has derived the following amounts of profit from the payphone sales transactions with the Lessors of the PPUs ($ in thousands):

	Calendar 1999	6 M/E 6/30/2000
Payphone sales	$ 125,634	$ 51,979
Costs of payphone sales, including lease refunds	80,590	8,170
Profits from payphone sales	$ 45,044	$ 43,809

14. ETS's Financial Statements do not reflect any significant sources of cash to ETS other than from the operating revenues set forth in item 11 hereof, which are substantially exceeded by the operating expenses set forth in item 12 hereof, and from the payphone sales transactions with the Lessors of the PPUs set forth in item 13 hereof.

15. The ETS balance sheet reflects accounts receivable from affiliates of $11,629,000 and investments in subsidiaries of $6,192,000 as of June 30, 2000, for a total of $17,821,000 invested in or advanced to related parties or affiliates. These amounts include net increases in such invest-

ments and advances of $10,993,000 in calendar year 1999 and $2,391,000 in the six months ended June 30, 2000. The notes to the financial statements for the fifteen month period ended March 31, 1999, state that the accounts receivable due from affiliates consist of loans made to companies controlled by the primary shareholder of ETS, that the loans are non-interest bearing, and that the borrowing entities did not have cash on hand, at that time, to repay the loans.

16. Based on the foregoing financial information, the financial activities of ETS related to the sale and leaseback of PPUs, the operations of the PPUs and investments in, and advances to, affiliates may be summarized as follows ($ in thousands):

	Calendar 1999	6 M/E 6/30/2000
Summary of Uses of Cash		
Operating Revenues	$ 47,381	$ 29,255
Telephone calling operations expenses	44,538	29,166
Lease payments	29,517	22,903
General and administrative expenses	14,715	10,449
Total operating costs and expenses	88,770	62,518

Net losses from operations	41,389	33,263
Investments in and advances to affiliates, net	10,993	2,391
Total operating losses and payments to affiliates	$ 52,382	$ 35,654
Financing of Operating Losses and Payments to Affiliates-		
Payphone sales	$125,634	$ 51,979
Costs of payphone sales, including lease refunds	80,590	8,170
Profit from payphone sales	$ 45,044	$ 43,809

17. The ETS Financial Statements reflect total net income from all activities of $2,490,000 in calendar year 1999 and $10,402,000 for the six months ended June 30, 2000. If the Financial Statements had treated the PPU sale and leaseback transactions as capital leases as required by generally accepted accounting principles, the profits from the payphone sales transaction would not be recognized as income. If the PPU profits from payphone sales of $45,044,000 for calendar year 1999 and $43,809,000 for the six months ended June 30, 2000, were subtracted from the reported net income, then ETS would have reported net losses of $42,554,000 and $33,407,000 in the respective periods. (The statement of

operations for the fifteen month period ended March 31, 1999, which purports to follow generally accepted accounting principles, reflects a net loss of $26,770,000.)

18. The balance sheet of ETS as of June 30, 2000, reflects positive stockholders' equity (i.e., total assets in excess of total liabilities) of $12,591,000. If this balance sheet had treated the PPU sale and leaseback transactions as capital leases as required by generally accepted accounting principles, the PPU repurchase obligation under the leases would be recorded as a liability. Since ETS is obligated to repurchase the PPUs from the Lessors for an amount equal to the original sales price, the amount of this liability would substantially equate to PPU sales revenues derived from the PPU leases currently in effect. Further, the capital lease accounting treatment requires that the costs directly associated with the PPU sales revenue (equipment and route purchases, sales commissions, etc.) be recorded on the balance sheet at the lower of depreciated cost or net realizable value. Based solely on the PPU sales activity of ETS for calendar year 1999 and the six months ended June 30, 2000, (i.e., totally ignoring lease obligation liabilities and costs arising from PPU sales for periods prior to January 1, 1999), the adjustments to treat such PPU sale and leaseback transactions as capital leases would result in a decrease in stockholders' equity by a minimum amount of $88,853,000, which amount represents the total reported profits from PPU sales transactions during such period. If this $88,853,000 adjustment to reduce

stockholders' equity were subtracted from the reported stockholders' equity of $12,591,000 at June 30, 2000, then ETS would have reported a deficiency in stockholders' equity (i.e., total liabilities in excess of total assets) of $76,262,000 at that date. (The balance sheet as of March 31, 1999, which purports to follow generally accepted accounting principles, reflects a deficiency in stockholders' equity of $24,493,000.)

19. The balance sheet of ETS as of June 30, 2000, reflects a deficiency in working capital of $6,378,000 representing the excess of current liabilities of $37,503,000 over current assets of $31,125,000. The PPU lease agreements require ETS to repurchase the PPUs from the Lessors upon 180 days notice, and as previously stated herein, the capital lease obligation liability is not reflected on the ETS balance sheet. The PPU repurchase obligations, based solely on the total PPU sales activity for calendar year 1999 and the six months ended June 30, 2000, (i.e., totally ignoring lease obligation liabilities arising from PPU sales for periods prior to January 1, 1999), represent a liability of $177,613,000 for the total sales during this period. Since the Lessors have the right to exercise their PPU repurchase rights upon 180 days notice to ETS, the full amount of this capital lease obligation liability could be reflected on the balance sheet as a current obligation. If this $177,613,000 current liability were added to the reported working capital deficiency of $6,378,000 at June 30, 2000, then ETS would have reported a working capital deficiency of $183,991,000 at that date. (The

balance sheet as of March 31, 1999, which purports to follow generally accepted accounting principles, reflects a total capital lease obligation liability of $164,383,000.)

20. Based on the foregoing observations and the application of generally accepted accounting principles to the Financial Statements, the following conclusions may be reached:

    a. ETS is insolvent at June 30, 2000.

    b. In the event that any significant number of Lessors should exercise their put options to require ETS to repurchase their PPUs, ETS would be unable to meet its current obligations, as indicated by the deficiency in working capital at June 30, 2000.

    c. ETS's operations of the pay telephone business have not been profitable. Over the eighteen months ended June 30, 2000 and the fifteen months ended March 31, 1999, ETS's operating expenses have substantially exceeded ETS's operating revenues.

    d. Inasmuch as ETS's operations of the pay telephone business have not been profitable, coupled with the fact that ETS's only other significant source of cash has been derived from payphone sales transactions with Lessors of the PPUs, the payphone sales transactions have been the source of cash to finance (i) ETS's operating losses from telephone operations, (ii) the monthly rental payments made to the Lessors of the PPUs,

and (iii) the payments which ETS has made to its affiliates.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of September, 2000.

/s/ DAVID H. CRUMPTON
DAVID H. CRUMPTON

[PLAINTIFF'S EXHIBIT 6]

DECLARATION OF A.S. GIBBS

I, A.S. Gibbs, declare under penalty of perjury that:

1. I have personal knowledge of all facts stated herein.
2. I am currently 86 years old. I am also retired.
3. I became aware of ETS Payphones, Inc. ("ETS") approximately three or four years ago through Mr. Phil Hayhill, a financial adviser with Eco-Cash Management.
4. I initially purchased a total of 25 payphones from ETS. My total investment in those payphones was $175,000.
5. I purchased an additional six payphones from ETS around two months ago. My total investment in those payphones was $42,000.
6. According to information received from ETS, my payphones are located in Texas and Florida. However, I have never actually seen my payphones. None of my payphones are located near my residence in Stuart, Florida.
7. I invested my money in ETS because it appeared to be a good investment opportunity and offered a good rate of return. I did not enter this investment with the idea of actually operating any payphones myself.
8. I leased all my payphones back to ETS. I receive monthly lease payments from ETS of approximately $80 per payphone.

9. I signed an agreement with ETS in which ETS promises to buy back my payphones within 180 days at my request.
10. I have always received my monthly lease payments from ETS. I have not yet exercised any buyback agreements.
11. I do not manage any of my payphones nor do I intend to ever manage any of my payphones. In fact, I do not possess the expertise to manage payphones. All of my payphones are managed by ETS.
12. Neither ETS or any of its representatives have ever informed me, either before or after making my investment, that the receipt of my monthly lease payments is dependent on the sale of payphones to new ETS investors.
13. Neither ETS or any of its representatives have ever informed me, either before or after making my investment, that ETS payphone operations are not profitable.
14. Neither ETS or any of its representatives have ever informed me, either before or after making my investment, that if a significant number of investors decided to exercise their options to sell their payphones back to ETS, that ETS does not have the available financial resources to satisfy its obligations.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9 day of September 2000.

/s/ A.S. GIBBS
A.S. GIBBS

[PLAINTIFF'S EXHIBIT 7]

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

File No. A-02501

IN THE MATTER OF ETS PAYPHONES, INC.

INVESTIGATIVE INTERVIEW

TRANSCRIPT

APPEARANCES:

On behalf of the Securities and Exchange Commission

BARRY R. LAKAS, Staff Accountant
Securities and Exchange Commission
Suite 1000, 3475 Lenox Road
Atlanta Georgia 30326
(404) 842-7600

On behalf of the Witness

HUBERT FOUASSE, *PRO SE*

[3]

* * * * *

HERBERT FOUASSE

being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. LAKAS:

* * * * *

[7]

Q. Okay. Your educational background, and briefly that would be just the year you graduated high school, any college degrees.

A. High school '68, bachelor of arts '71, bachelor of education '77, D.C. in 1981, in chiropractic orthopedics in '87.

Q. What colleges did you attend?

A. My bachelors degrees were from the University of Manitoba; Life College was the chiropractic degree; and the chiropractic orthopedics was done through Los Angeles Chiropractic College; and a lot more post-graduate work that I really don't want to go through.

* * * * *

[12]

A. Okay. Let's go to the substance of the questions here.

You are in investor in ETS Payphones, Inc.; is that correct?

A. Yes.

Q. When did you invest?

A. The first investment was March of '97.

Q. And how much did you invest?

A. That initial investment?

Q. Yes.

A. $5,000.

Q. So you bought one pay phone?

A. That's right.

Q. And who sold you this investment?

A. B.E.E. Communications.

Q. How did you hear about this investment?

A. A friend of mine.

Q. Did he put you in contact with anyone? In other words, did this friend buy this investment from a certain individual or entity?

A. He bought it from B.E.E. Communications.

Q. Okay. So you directly contacted B.E.E. [13] Communications?

A. I believe I did, yeah.

Q. Who did you contact there?

A. The name that comes to mind, because I think she was I think running B.E.E. Communications at the time, is Beverly Slater.

Q. So you contacted Beverly Slater directly?

A. Uh-huh.

Q. So you did not buy your investment through a life insurance agency?

A. No.

Q. You didn't buy it through a life insurance agent?

A. No.

Q. What was represented to you about this investment? Who made the representation?

A. Beverly Slater at B.E.E. Communications, and—Do you want me to go through the content of what was said?

Q. Yeah, whatever she told you. Did you already know a lot about the investment when you contacted Beverly Slater?

A. I knew what my friend had told me about it, what he knew about it, and that the investment was $5,000, and that you would be an owner of a phone, a location, and actually a physical phone, and that there would be a lease involved with ETS to perform management of these particular phone, management as far as running the day-to-day operation [14] of the phone, and that there would be a lease document, and that I would be paid I believe on the initial phone was $75 a month.

Q. So you went into this with the idea of this just being an investment; is that correct?

A. Uh-huh, yes.

Q. You did not go into this with the idea of actually buying a pay phone and running it yourself?

A. No. That option was offered, but I was not interested in that.

Q. Did she offer that option to you?

A. Yes.

Q. And that option would be that you could manage the pay phone yourself?

A. Right.

Q. Did she in any way encourage you to take the management option?

A. No. They left everything up to myself to decide.

Q. But you yourself knew nothing about operating a pay phone?

A. No.

Q. Did they offer any type of rate of return? By they I mean Beverly Slater and B.E.E. Communications.

A. Well, $75 a month on a $5,000 investment initially over a period of five years turns out to be I think 18 [15] percent.

Q. Did B.E.E. or Ms. Slater tell you that you could get your money back at any time on your investment?

A. Yes, uh-huh.

Q. That would be the full $5,000?

A. Yes.

Q. Could you go into that a little if you don't mind, just basically what she told you about that.

A. Yeah. The phone could be liquidated at any time. I believe as the contract states if I notify them that I want to liquidate the phone they would have 180 days to return the initial investment of $5,000.

Q. So basically you have to give them 180 days?

A. Right.

Q. Now, when she mentioned ETS Payphones would manage the pay phone, did she mention any other companies that might manage the pay phone?

A. Not that I recall.

Q. Did she tell you anything about ETS Payphones itself?

A. She told me about the principle involved, I guess.

Q. What did she say about ETS Payphones?

A. That they were a growing company, and that they had ambitions to be probably the biggest phone operators in the States.

[16]

Q. Did she give you any type of documents before you bought?

A. Yes.

Q. I'm not going to enter this as an exhibit yet. Does this look familiar?

A. Yes.

MR. LAKAS: Let's enter this as an exhibit.

[Exhibit Number 17 was marked for identification.]

Q. I'm handing the witness Exhibit Number 17 which is a B.E.E. Communications brochure, it includes a pamphlet entitled Opportunity Doesn't Always Knock, Sometimes it Rings, with a B.E.E. Communications logo on the bottom of the pamphlet. I'll let you look at that for a minute.

A. Okay.

Q. Have you ever seen that document before?

A. Yes.

Q. Is that what Beverly Slater handed you before the investment?

A. Yes.

Q. And did you read this document beforehand?

A. Yes.

Q. So when did you actually decide to make the investment? Right after you looked at this?

A. Yeah, that, and discussing this particular [17] investment with my friend.

Q. Did this brochure influence your investment decision in any way?

A. Well, it reiterated the options that are in there about which methods, levels of investment could be made, or I guess involvement.

Q. How about the fact that smart phones are profitable; did that influence your investment decision in any way?

A. Sure.

Q. Did you happen to read this box in the middle of the brochure about the economics of the medium-volume pay phone? Do you remember seeing that?

A. Yes.

Q. Did that influence your decision in any way?

A. Yeah, I suppose.

Q. Well, if you don't remember—

A. Yeah, as far as I can recall.

Q. So when you—this was March of 1997, when you decided to make the pay phone investment who did you write your check to?

A. B.E.E. Communications.

Q. And who did you give it to? Who did you give the check to?

A. B.E.E. Communications.

[18]

Q. But I mean who did you personally hand it to? Did you mail it to them?

A. I think I mailed it to B.E.E. Communications.

Q. And how was ETS Payphones going to come into the picture, then?

A. Well, as far as I know they're a management company of pay phones, so I was sent a copy of a sample lease, and proceeded from there.

Q. Did your friend tell you about ETS Payphones, or was it Beverly Slater?

A. It was my friend originally.

Q. On the last page of the brochure or the pamphlet included in Exhibit 17 there's a reference to ETS Payphones, Inc., but you already knew about ETS Payphones beforehand?

A. Yes.

Q. Before you made your B.E.E. investment.

A. Uh-huh.

Q. So ETS Payphones just was recommended by your friend and Beverly Slater?

A. Right.

Q. It was just understood you would be working with ETS Payphones on this?

A. Yes.

Q. Did you look at any other management companies?

A. No.

[19]

Q. Okay. So you made your $5,000 investment with B.E.E. Communications in March of '97. I assume you made the check out to B.E.E. Communications?

A. I believe so, yeah.

Q. And how long did it take you to hear from ETS Payphones? I assume they had to send you a form.

A. Yes, they sent a lease packet with—I think it was the sample lease packet, and that was probably within two or three weeks.

Q. So you filled out the lease packet, is that where ETS then leases the phone back from you, the investor? Is that how it's supposed to work?

A. Yeah.

Q. Did you ever talk to anyone from ETS?

A. Not initially after that first investment. It was a while before I did. I visited their—

Q. Oh, you did visit?

A. —within the year if I recall.

Q. Because you invested in March of 1997, when did you receive your first investment return check?

A. About sixty days later.

Q. And you had already filled out the ETS paperwork about the leasing program?

A. Uh-huh.

Q. When you filled out the leasing package for ETS [20] Payphones, do you have a copy of that lease package? I would just like to know what they gave you at the time.

A. I think this is it here. Yeah. Did you get a copy of that?

Q. Okay. Actually let's go through this bill of sale I guess you entered into with B.E.E.

[Exhibit Number 18 was marked for identification.]

Q. I have in front of me Exhibit Number 18, the title of the first page is Pay Phone Package COCOT Bill of Sale, it's a bill of sale executed the 1st of March 1997 between B.E.E. Communications and Hubert Fouasse. It's signed by B.E.E. Communications, Beverly Slater as the manager.

So this is what you originally signed with B.E.E. Communications for selling you the pay phone?

A. Right.

Q. Flipping over three pages, you signed a telephone equipment lease agreement. It says you're the lessor, and ETS Payphones, Inc. is the lessee, so the equipment lease agreement was basically done at the same time as when you purchased the pay phone; is that correct?

A. According to the dates there, yes.

Q. So do you know if this came later? Or was this just all done at the same time? This indicates it was done at the same time.

[21]

A. This document here?

Q. Yeah.

A. It came later.

Q. It did come later?

A. Uh-huh.

Q. And the option to sell agreement which is in the back of this document. That's also dated the 1st of March, 1997.

A. Uh-huh.

Q. What is this agreement saying?

A. Between myself and ETS Payphones.

Q. This is the document that says you have the right to sell the pay phone back to ETS Payphones?

A. According to the document it would appear to be, yeah.

Q. Yeah, it talks about the 180 days.

Well, in substance, though, maybe these documents came later, but according to ETS Payphones they considered that you entered into this agreement on the 1st of March 1997; is that correct?

A. Yeah.

* * * * *

[22]

Q. You said you made another investment in B.E.E. Communications; is that correct?

[23]

A. Yes.

Q. And what was the date of that investment?

A. November of '99.

Q. And how much money did you invest the second time?

A. $7,000.

* * * * *

[24]

Q. The lease date, okay. So you actually invested $7,000 on September 10th, 1999?

A Right.

Q. And the lease agreement started on November 2nd, 1999?

A. Right.

Q. Do you know where your pay phones are located?

A. This particular one here?

Q. Both of them.

A. Yes. It's in the documents.

Q. Have you ever—Well, just to the best of your recollection.

A. I have never visited my pay phones, though.

Q. But you have received all your monthly lease payments?

A. Yes.

Q. And you did request a refund on—Or you did elect the option to sell your pay phones; is that correct?

A. Yes, some of it.

[25]

A. Some of it?

Q. Yeah.

A. You still own one?

Q. I still own the first one here.

A. Oh, you still own the first one?

Q. Uh-huh.

A. So you did receive your $7,000 back?

Q. On one of the phones, yes.

A. And when did you request your refund?

Q. When did I request it?

A. Yes.

Q. I believe February of this year.

* * * * *

[34]

Q. Are you yourself an agent for B.E.E. Communications?

A. Yes.

Q. And have you sold pay phones?

A. Yes.

Q. And how many have you sold?

A. About fifteen or so.

Q. But even as an agent for B.E.E. did you have any meetings with ETS?

[35]

A. No.

Q. Who trains you to be an agent?

A. B.E.E. Communications.

* * * * *

[37]

Q. Did anyone ever tell you or inform you that your pay phone location could increase in value?

A. I don't recall anybody ever making that statement, but it sounds to me like it could, you know, and there was an increase in price of the phones over the period of time that I initially invested and today.

Q. So that's just speculation on your part, though?

A. Just speculation.

Q. You have never seen any proof of a pay phone location going up in value?

The way I understand it there may be a pay phone sitting in a 7-11 store somewhere, and a company like ETS might have the rights for that location, and your claim is that that location could actually go up in value even though they sold it to you for seven thousand, but the claim is that that site might be worth 10,000 now.

A. Uh-huh.

Q. You haven't seen any proof of that?

A. No, I haven't. I have not seen any documentation on that. If I recall, my friend may have mentioned that that's a possibility, and that sounded like a possibility to me, too.

* * * * *

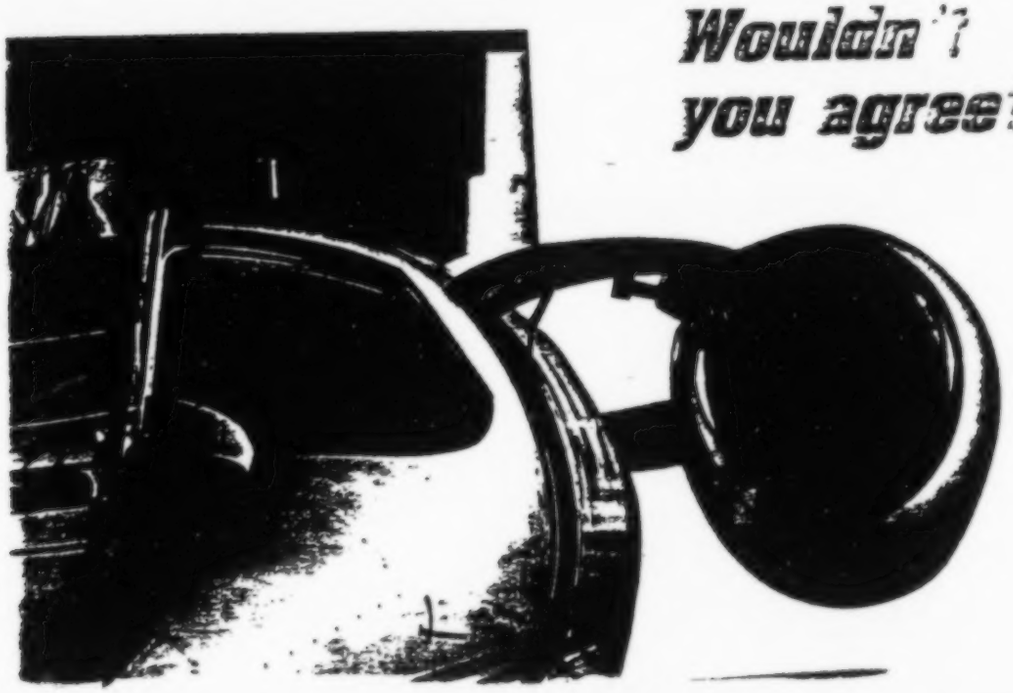
PLAINTIFF'S EXHIBIT 15

Opportunity Doesn't Always **Knock** *Sometimes It* **Rings!**

B·E·E
COMMUNICATIONS

Of all the individuals who are wealthy today...

A great majority became so by owning property or another valuable asset that has increased in value.



Wouldn't you agree?

Property, For Example:

Annual Income	$7,200
Annual Mortgage & Tax	$6,500
Repairs and Maintenance	$500
Net Annual Income	**$200**

After 15 years, assuming a 5% annual rent increase and a paid mortgage.

Annual Income	$14,400
Annual Mortgage & Tax	$1,200
Repair and Maintenance	$1,200
Net Annual Income	**$12,000**

You would also receive valuable tax breaks such as the depreciation and expense deductions of repairs. However, that also cuts into your short term income.

Now you know one of the secrets of how many people become financially independent.

Of course you will have to maintain the house in good repair, deal with tenants, and hold it for a long time.

Alternative — What if?

Instead of a house, you possessed an asset that would:

- Have no tenants.
- Provide immediate cash flow.
- Be an all cash business.
- Be fully insured.
- Have easy liquidity.
- Require holding for 5 years or less.
- Offer several management options.

What if...

the asset was a PAYPHONE?

Yes a payphone!

Not just any payphone...but a **Smart Phone**

The Smart Phone Difference

Did you know that all payphones are not **Smart Phones**?

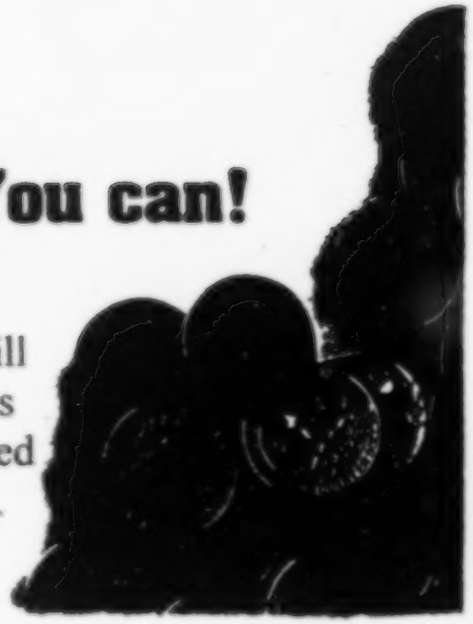
A Smart Phone

- Is monitored 24 hours a day.
- Calls in to report any mechanical or electrical problems.
- Has electronic coin acceptors.
- Is surge protected.
- Has waterproof keypads.
- Is designed for future upgrade. (Will not become obsolete)
- Is on the cutting edge of technology.
- Has discounted long-distance. (This means increased usage)
- Is a turn-key package.

What if *You* Could Own Such a Payphone?

For a limited time, You can!

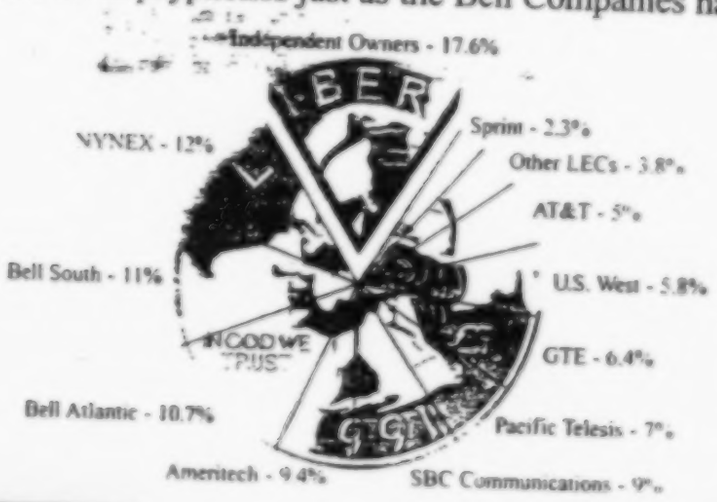
For a limited time, this opportunity will be available in the telecommunications industry to own your own coin-operated payphone and earn a very good profit.



Ownership

Until recently, almost all payphones have been owned and operated by the Bell Telephone Companies. As a result of deregulation they are now divesting themselves of the ownership and operation of these payphones.

This presents a special opportunity for individuals to own payphones and earn profits from payphones just as the Bell Companies have done.



Smart phone ownership offers a unique opportunity.

Payphone ownership...

...is virtually recession proof.

...can produce revenue 24 hours a day, 365 days a year.

...can offer immediate, steady cash flow.

...may provide significant income tax benefits.

"There a

Why Are Smart Phones So Profitable?

Payphones generate revenue in many ways:

- Coin Calls.
- Calling Card Calls.
- Credit Card Calls.
- Collect Calls.
- Dial-Around Calls.

Here is an example of the revenue generated by a medium volume payphone:

Incremental Economics of a Medium - Volume Payphone

	Monthly	Annually
Revenue - Coin	$200	$2400
Revenue - Non Coin	98	1176
Total Revenues	$298	$3576
Telephone Line	42	504
Site Commission	75	900
Long Distance Charges	17	204
Cost of Revenues	134	1608
Gross Margin	$164	$1968

CAUTION: These figures are only examples of what may be earned on a medium-volume payphone. Site commissions, fees and long distance charges may vary with locations of payphones.

millions to be made from owning payphones."

USA Today

Option 1

Internal Maintenance Program

This is for the payphone owner who wants to be involved with the day-to-day operation of his payphones, but lacks the technical expertise to do so. This option allows the owner to take full advantage of the income potential of the payphone industry.

We will provide you a turn-key operation with the payphones in place and operating on your site after State Certification. You will service the payphones each month, collect the revenue and maintain the payphones as needed.

Option 2

Turn-Key Maintenance Program

Option Two is for the payphone owner who would like to be less involved with the day-to-day operations of the payphone business and who wants to take advantage of the income potential on a profit or loss basis.

We will provide you with payphones in place and operating. A payphone management company will manage and maintain the payphones including all internal and external maintenance, repair and collections for a monthly fee.

Option 3

Payphone Equipment Leasing

Option Three is for the payphone owner who would like a payphone management company to be involved in the day-to-day operation of the payphones.

We will provide you with payphones in place and operating. A payphone management company will lease your payphones for five years at $80 per month for each payphone.

At the end of your lease, you have three choices:

a. **You may take over the maintenance and operation of the payphones.**

b. **You may elect to enter into another five year lease with the phone management company if mutually agreed upon.**

c. **You may sell your payphones for the original purchase price.**

Plus, with a 90 day notice, you may take over the operation of your payphones and locations at any time during the lease. Or, with a 180 day notice, the payphone management company will liquidate your payphones and locations with no penalty.

BEST AVAILABLE COPY

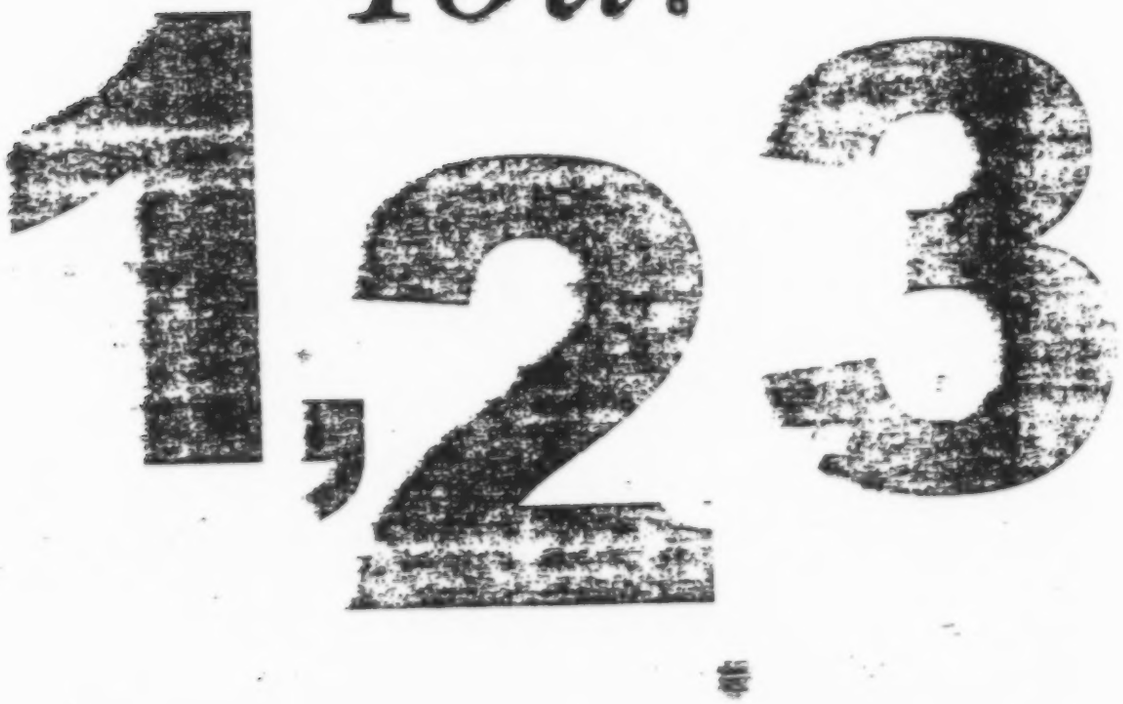
Bottom Line

The purchase price for a payphone, complete with location, and ready to operate: $6,750.

Self-directed IRA, Keogh, SEP and 401K plans may be used to fund the purchase of these payphones. (Option 3 only)

Opportunity Doesn't Always **Knock** *Sometimes It* **Rings!**

Which Option is Best For *You?*



Taking advantage of this opportunity is simple.

For information purposes only.

ETS PAYPHONES

ETS Payphones, Inc., based in Lithia Springs, GA is a state certified owner and operator of thousands of payphones currently operating in many states.

ETS Payphones, Inc. has available a payphone Equipment Lease Program whereby the owner may lease his/her phone to ETS, or you may elect to hire ETS as the professional manager of your payphones.

If you are interested in this program please fill out the bottom half of this form, detach and FAX to the ETS Home Office.

Fax (770) 319-9233

YES, I am interested in the Equipment Lease Program!

☐ I HAVE received the "Payphone Equipment Lease Program" package.

☐ I have NOT received the "Payphone Equipment Lease Program" package.

Date: _____

Name _____
PRINT CLEARLY PLEASE

Address _____

City, State, ZIP _____

Daytime Phone Number (BP)

☐☐☐-☐☐☐-☐☐☐☐

Night Phone Number

☐☐☐-☐☐☐-☐☐☐☐

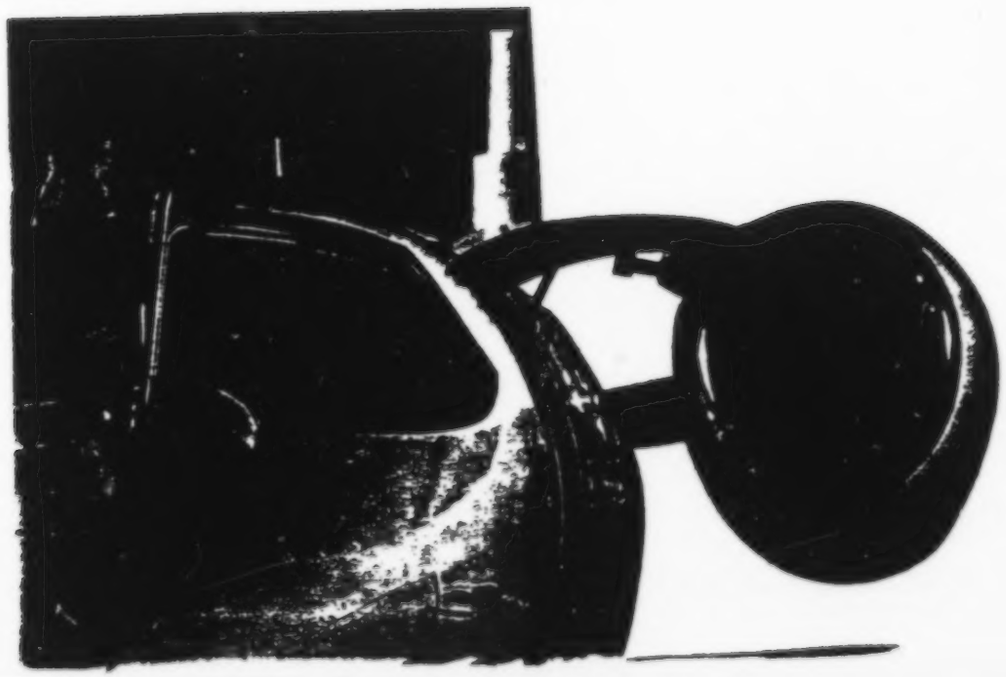
ETS PAYPHONES

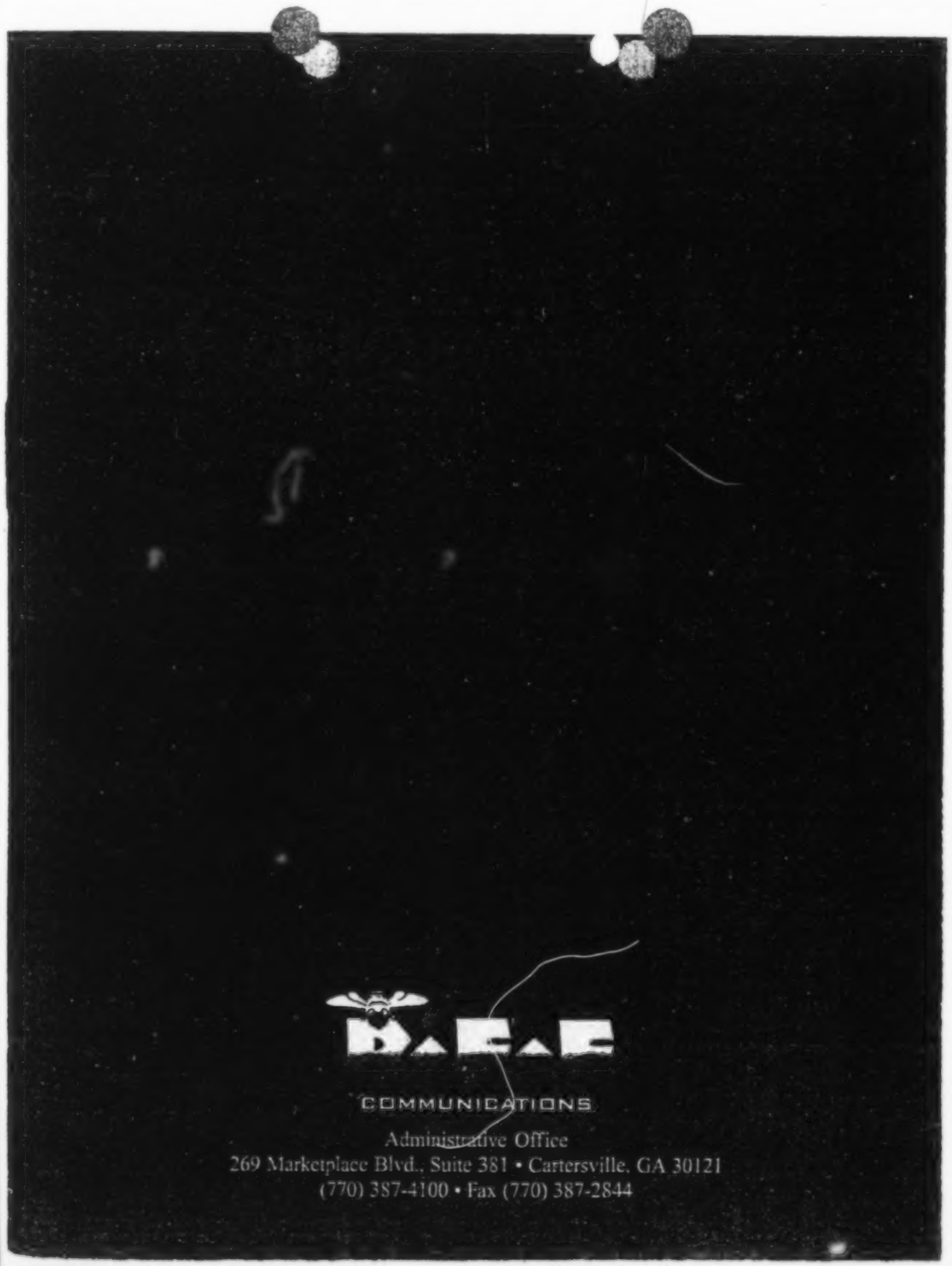
_____
Signature

_____ BEE
Referred By (Print clearly please) Agency

ETS PAYPHONES, INC. • 561 THORNTON ROAD, SUITE K • LITHIA SPRINGS, GA 30122 • (770) 819-1600 • FAX (770) 819-1685

B·E·E
COMMUNICATIONS





B·E·E
COMMUNICATIONS

Administrative Office
269 Marketplace Blvd., Suite 381 • Cartersville, GA 30121
(770) 387-4100 • Fax (770) 387-2844

PLAINTIFF'S EXHIBIT 16

B·E·E COMMUNICATIONS

COCOT Purchase Agreement

CUSTOMER OWNED COIN OPERATED TELEPHONE

448 N. Cedar Bluff Road, Suite 352
Knoxville, TN 37923
1-888-272-4704

INVOICE NUMBER: BC 8382

Sold To: ☐ Individual ☐ Corporation ☐ IRA ☐ J.T.W.R.O.S ☐ Other

Name 1 _____ Social Security/FIN #: ___ - ___ - _____

Name 2 _____ Second SS # (J.T.) ___ - ___ - _____

Address _____ Home Phone (____) _____

City _____ Business Phone (____) _____

State _____ ZIP _____ Fax Number (____) _____

Buyer Elects ☐ Option 1 ☐ Option 2 ☐ Option 3

Ship To:

Name _____

Street Address _____

City, State, ZIP _____

Entered into and agreed upon the _____ day of _____, 19 ____, the purchaser ("Owner") agrees to purchase and B.E.E. Communications, ("Seller") agrees to sell _____ unit(s) of pay telephone(s), hereinafter referred to as "Equipment."

1. Consideration – Cash Payment

   a. In full payment to Seller for the Equipment sold hereunder, Owner shall pay total sum as follows: $6,750 x_____ units = $_____.

   b. This agreement shall serve as a receipt for Owner.

2. Purchaser has fifteen (15) days from the date of this Purchase Agreement to nullify the sale, in which Seller will give full refund.

3. Should for any reason, BEE Communications, not deliver the equipment, the Purchaser will be given a full refund.

4. Bill of Sale and Delivery
   a. As directed by Owner, Seller agrees to deliver the Equipment purchased herein to the address indicated above.
   b. Delivery by Seller shall be considered complete upon delivery of the Equipment to Owner, Owner's Agent or to a suitable security facility as instructed.
   c. Owner agrees to take delivery of installed equipment and location on site.
   d. Upon delivery, Owner shall acquire all rights, title and interest in and to the Equipment purchased.

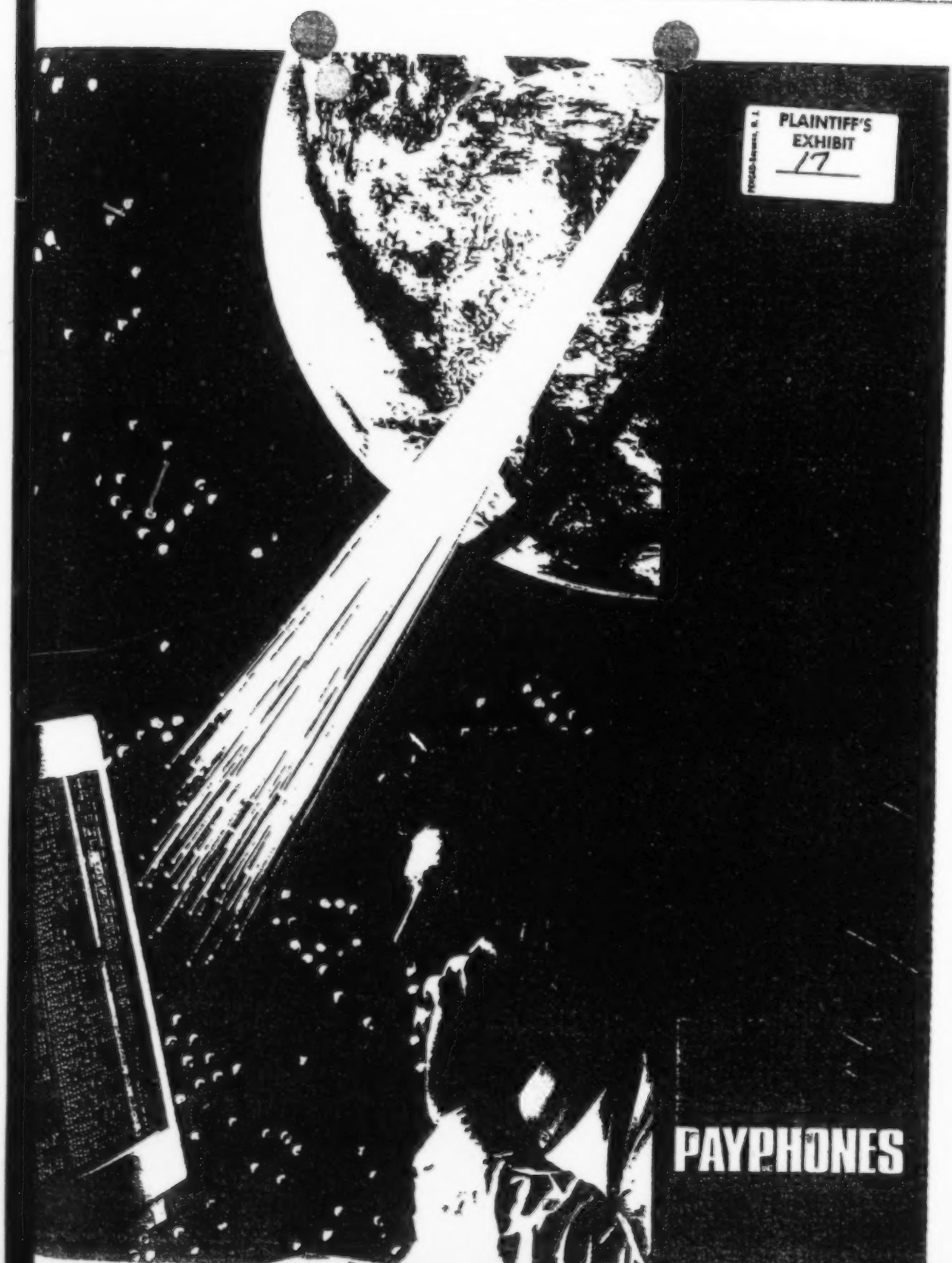
_____ _____
Purchaser's Signature Distributor Signature

_____ _____
Purchaser's Printed Name Distributor's Printed Name

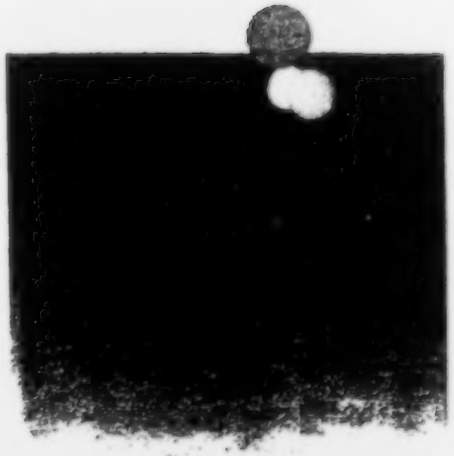
_____ SELLER: BEE COMMUNICATIONS
Signature of J.T.

Pink Copy - Purchaser Yellow Copy - Distributor White Copy - BEE

REV 9-1-98
FORM 101



ETS
PAYPHONES
561 Thornton Road
Lithia Springs, GA 30122
770-819-1600
770-819-1685



ETS
PAYPHONES

The Fast-Paced World of Telecommunications

Today's telecommunications industry provides a seemingly endless capacity for growth and profit. Never before has an industry moved more swiftly, pioneering sophisticated technology that has become the backbone of a thriving global economy and instantaneous communication systems. Telecommunications is the key to doing business in every civilized country in the world. It's a link between friends and families; home and business; from client to client; and between computer networks and database resources around the world.

With all the complex uses of communications technology, it's a wonder that one of the simplest building blocks of the industry; a single kind of telephone equipment that has been a familiar part of western society for decades.

Opportunity doesn't always knock... sometimes it rings

plays such a vital role in meeting everyday communication needs. It's the multi-billion-dollar pay telephone industry that is providing some of today's most exciting business opportunities, as demand continues to grow for this primary communications medium.

The Incomparable Pay Phone

More than two million pay phones are located in airports, restaurants, malls, public facilities, hotels and conference centers, as well as many other familiar places throughout the country. Is there any other means of communication likely to replace the pay phone? While technology advances, opening new channels and devices for communication, there really is no substitute for the pay phone. It is a fundamental and relatively inexpensive link in the chain of worldwide communications and is the medium of choice for telephone calls placed outside the home and place of business.

Pay phones have emerged as an exciting business opportunity in the rapidly evolving telecommunications market—and have already proved to be a reliable means of generating income. In the past, pay phones were operated with little or no profit, much like a service in the public interest. Now, all of that has changed. Deregulation has provided the opportunity for corporate and private ownership, opening the door for profits for individual pay phone owners and operators.

An Emerging Competitive Market

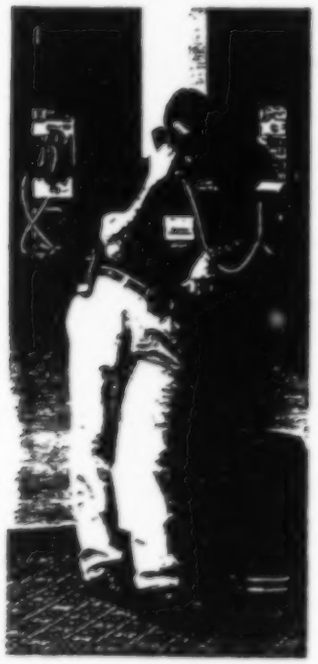
Until the mid '80s, all pay phones were owned and operated by a limited number of large corporations. These corporations controlled the development and manufacturing of pay telephone equipment, the lines, the long distance providers, the local exchange and system of operators, as well as all maintenance and collection of revenues. Without the type of competition found in a free marketplace, service was typically poor, with damaged, inoperative equipment neglected for weeks at a time.

The legislation which led to the deregulation of the telecommunications industry by the Federal Communications Commission (FCC), beginning in 1984, opened the field to competitors in many areas. Additional rulings and legislation resulted in competitors entering the market as manufacturers of sophisticated, technologically advanced communications equipment, and most importantly, the opportunity for private involvement in the pay phone industry, beginning in 198".

Now, more than a decade after deregulation was set into motion, competition has led to the outstanding innovations and sophisticated equipment that make the pay phone industry run more smoothly than ever, boosting profit potential to multi-billion-dollar levels.

ETS manages and maintains phones in busy conference facilities, like the upscale Cobb Galleria Centre just north of Atlanta.

Why Are Pay Phones Ringing with Opportunity?



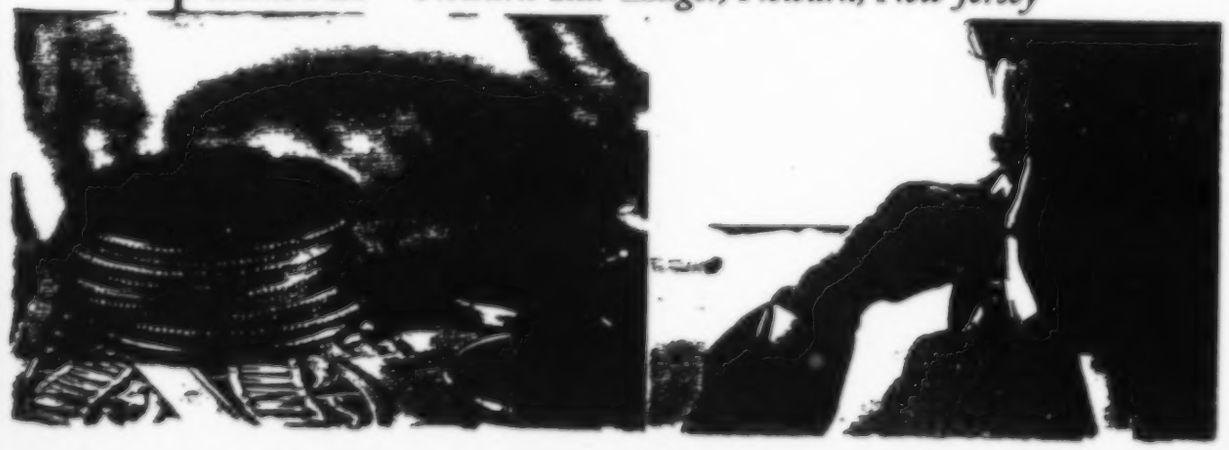
Since private owners entered the field, the pay phone industry has grown into a highly profitable venture, with revenues in excess of $9 billion in 1996 alone. Competing manufacturers have been able to focus on the development of new technologies which promote greater operating efficiencies. With increased efficiency, pay phone profits have grown dramatically, and are expected to continue to escalate, with recent legislation that provides for additional compensation to pay phone owners.

Pay phone ownership offers a unique business environment:

- **It is virtually recession-proof.**
- **It can produce revenue 24 hours a day, 365 days a year.**
- **Pay phones can offer a steady, immediate cash flow.**
- **And, it may provide significant income tax benefits.**

Very few business opportunities can offer the potential for ongoing revenue generation that is available in today's pay telephone industry.

"With continuing deregulation of the telephone industry, those competitive services are **expected to grow** as the access to all public pay phones is expanded." *Newark Star-Ledger, Newark, New Jersey*



The Smart Phone Difference

Independent pay phone owners and operators are changing the landscape of the pay phone industry. Much of the pay phone equipment currently installed is obsolete. Independent pay phone operators, such as ETS Payphones, Inc., who install the most technologically advanced equipment, have a competitive edge over older, larger operators.

The "Smart Phone" is the state-of-the-art telephone equipment of today's pay phone revolution. These phones are designed to "talk" with PC-based systems to manage every function of the pay phone from a remote, centralized location. The Smart Phone equipment installed by ETS is equipped with a micro-processor that incorporates self-diagnostic and reporting functions, with monitoring capabilities from a central location via computer modem. Older equipment does not have these "instantaneous" communication capabilities and must be serviced and managed individually, and usually, in person. Smart Phone technology results in superior "hands-off" operation, unparalleled efficiency and optimum profitability.

Smart Phones not only require less hands-on maintenance, but also can report equipment malfunctions and the number and type of calls being made from each phone. With this type of reporting, it's possible for a pay phone owner to know at all times how each pay phone is performing.

Pay phones must be operational to produce revenue. The longer a pay phone is out of service, the less opportunity exists for income. The monitoring capabilities built into Smart Phones signal the ETS control center when phones are not operating properly. When signaled with a problem, ETS quickly dispatches a maintenance technician. Phones can be returned to proper operating order rapidly, with as little interruption in revenue generation as possible.

All pay phones installed by ETS are equipped with the means to manage the following electronically:

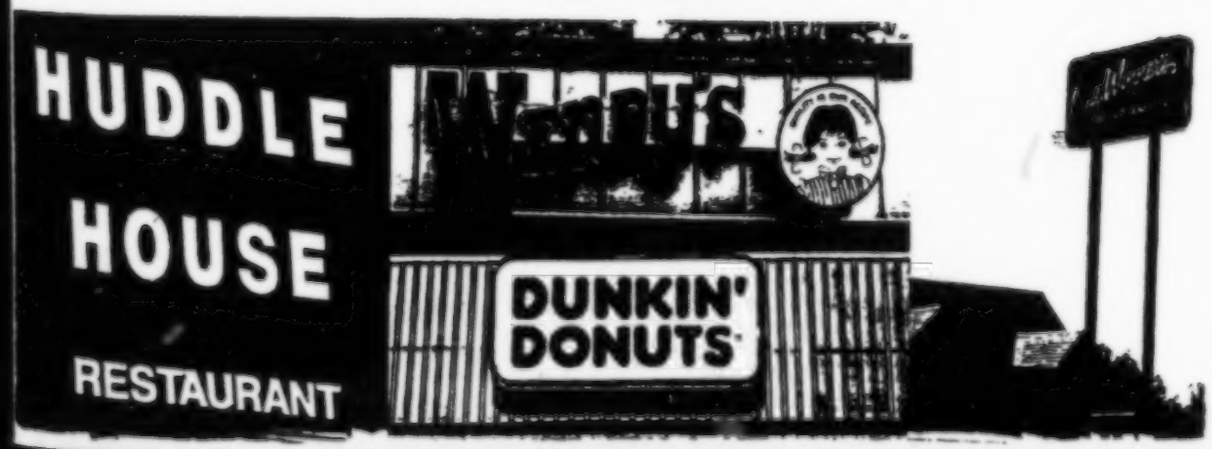
- **The level of coins in the cash box.**
- **Summeries of phone activity.**
- **Processing of credit card and calling card calls.**
- **Telephone vandalism and other damage.**

"There are millions to be made from owning pay phones."

Watch the Profits Add Up

Does it seem that an industry operated with pocket change might have income limitations? Not so! Revenue for 1996, the last year before legislative changes that altered the participation of the Bell Companies in the pay phone industry, topped $9 billion. The 1996 legislation promises even greater revenue, with regulations lifted for the charge for a basic pay phone call and compensation provided for 800 and 888 toll-free calls, as well as other "dial around" methods of payment commonly associated with pay phones.

Centralized monitoring for locations across the U.S. makes ETS a good choice for managing pay phones for national chains.



Why Are Pay Phones So Profitable?

While the revenue and expenses related to a single public pay telephone can vary, a public pay telephone located in a high-traffic or well-frequented location has the potential to provide an owner with substantial cash flow.

Pay phone revenue can be generated in many ways:

Coin Calls: Most calls initiated on pay phones are local calls made with coins. This provides immediate cash revenue for pay phone owners.

Calling Card/Credit Card Revenues: These "coinless" calls are billed to the caller's credit card or phone company calling card. Most card calls are long distance calls.

Collect/Third-Party Billing: Collect calls are also "coinless" calls, but require operator intervention and usually carry a surcharge that is added to the charge for the measured long distance rate.

"Dial Around" Revenues: In the past, toll-free calls to "800" and "888" telephone numbers did not provide revenue for the pay phone owner. Regulations have been changed to provide payment to pay phone owners for each "Dial Around" call.

The chart below demonstrates how independent owners of public pay telephones can profit from calls placed on their telephone equipment:

Incremental Economics of a Medium - Volume Pay Phone

	Monthly	Annually
Revenue - Coin	$200	$2400
Revenue - Non Coin	98	1176
Total Revenues	$298	$3576
Telephone Line	42	504
Site Commission	75	900
Long Distance Charges	17	204
Cost of Revenues	134	1608
Gross Margin	$164	$1968

CAUTION: These figures are only estimates of what may be earned on a medium-volume pay phone. Site commission, line and long distance charges may vary with location of phone.

"An average of **1,500 to 1,700 calls** are made on a pay phone per month, according to AT&T"
Cincinnati Post

ETS Payphones, Inc.—The Pay Phone Experts

ETS Payphones, Inc. has owned and operated public pay telephones since 1992. Growing from a local operation based in Atlanta, Georgia, ETS has expanded to a national firm with equipment and facilities located through the United States. ETS installs only the most technologically advanced Smart Phone equipment, which is monitored 24 hours a day from a central facility. With technicians and maintenance facilities located throughout the country, pay phones can be managed efficiently, with a timely response to every signal.

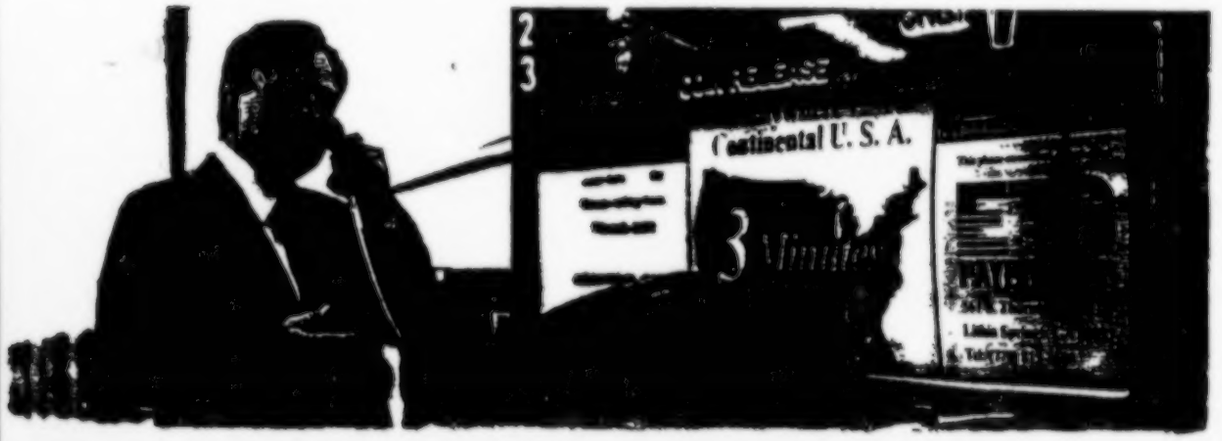
ETS owns and operates pay phones throughout the country and offers a wide range of services that include the management and service of independently owned pay telephone routes. A recent study indicates that independent operators of public pay telephones, such as ETS, can provide a higher level of service while incurring lower costs than the larger, less efficient operators.

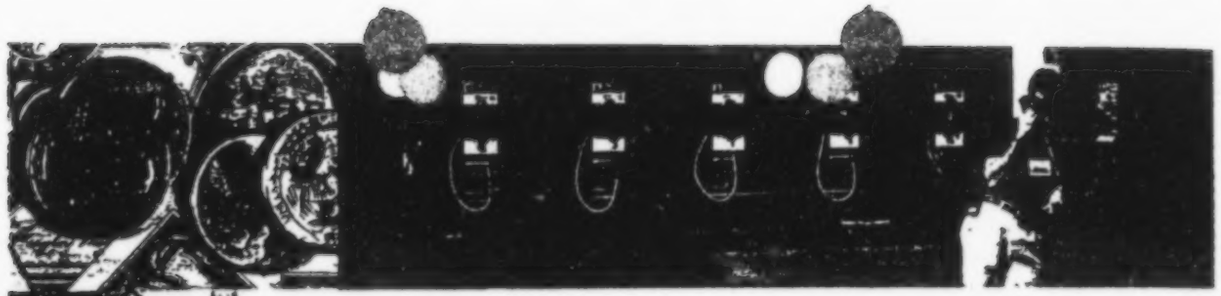
ETS offers the following services:

- Replacement of antiquated equipment in existing locations
- Locating sites suitable for public pay phones
- Securing a local operator service provider
- Securing a long-distance service provider
- Installation of equipment
- Internal pay phone equipment maintenance
- External pay phone equipment maintenance, including cleaning
- 24-hour equipment monitoring of "Smart Phones"
- Coin box collections

The broad base of operations built by ETS Payphones, Inc. crosses many states and governmental boundaries and provides a high quality, efficient management system for pay phone owners from coast to coast. This includes the management of pay phone equipment located in national fast food chains, restaurants, hotels, convenience stores, airports, sports arenas and other facilities that include pay phones on site.

For the pay phone owner, the need to contract individual management agreements for pay phone equipment on a state-by-state or region-by-region basis is eliminated. Both the site owner and pay phone owner can benefit from the experience, operating efficiencies and management expertise provided by ETS Payphones, Inc. Profits are maximized and all reports on pay phone activity are provided from one central location, in a timely manner.



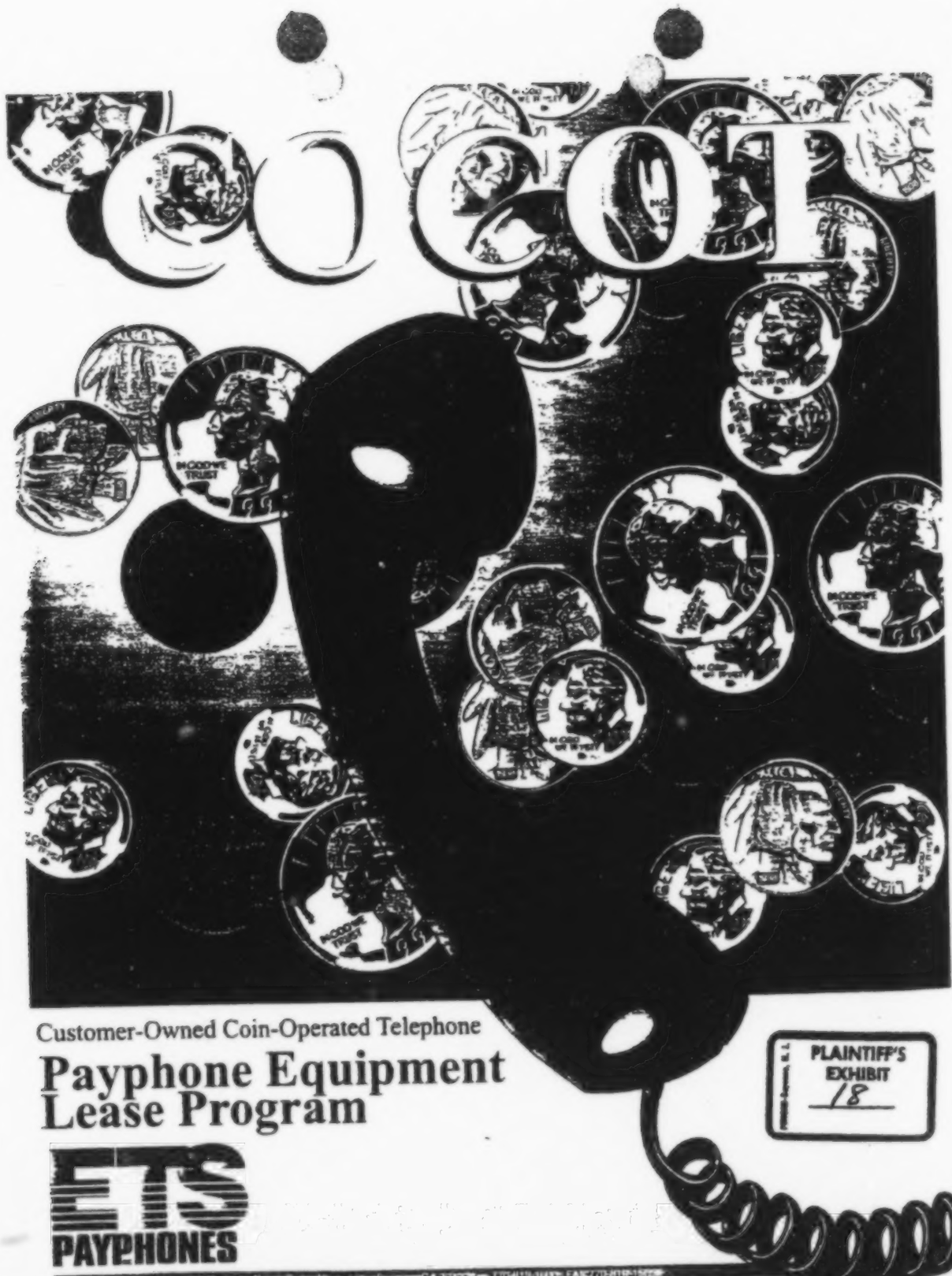


An Opportunity for a Profitable Future

The pay phone industry is primed for a successful and profitable future. Independent owners and operators in the pay phone industry may never again encounter an opportunity with so much potential for growth. ETS Payphones, Inc. offers a superior record of system maintenance, state-of-the-art equipment and management experience. For an opportunity to take part in this multi-billion dollar industry, look to ETS Payphones, Inc. to pave the way to a profitable, efficient pay phone operation.

PAYPHONES

561 Thornton Road
Lithia Springs, GA 30122
770-819-1600
770-819-1685



Customer-Owned Coin-Operated Telephone

Payphone Equipment Lease Program

PLAINTIFF'S EXHIBIT 18

ETS PAYPHONES

BASIC DISCLOSURE DOCUMENT

PRESENTED BY

ETS PAYPHONES, INC.
June 1999

INFORMATION FOR PROSPECTIVE OWNER/LESSORS

STUDY THIS MATERIAL CAREFULLY. WHILE IT CONTAINS SOME INFORMATION REGARDING YOUR LEASE. DO NOT RELY ON IT ENTIRELY. READ ALL OF THE LEASE CAREFULLY, AND TAKE TIME TO DECIDE IF IT IS RIGHT FOR YOU. IF POSSIBLE. SHOW YOUR LEASE TO AN ADVISOR (I.E., A LAWYER, CPA ETC.).

IF YOU FIND ANYTHING IN THESE DOCUMENTS THAT MAY BE WRONG, OR THAT YOU FEEL MAY HAVE BEEN LEFT OUT, YOU SHOULD LET US KNOW IMMEDIATELY.

revised 6/99

1. THE COMPANY

ETS Payphones, Inc. is a closely held Georgia Corporation with headquarters in Atlanta, Georgia. Founded in 1994, ETS owns, leases and services customer owned coin operated telephones (COCOT). Growing from a local area operation, ETS has become a national firm with equipment and facilities located throughout the United States. ETS installs only the most technologically advanced equipment, utilizing "Smart Phone" technology. Smart Phone technology allows ETS to electronically monitor all of its payphone equipment from strategically based technical support centers. ETS payphones are monitored 24 hours a day, and when problems are detected, repair technicians are dispatched promptly through their national service network.

ETS offers a wide range of services that include the management and servicing of independently owned payphone routes. A recent study indicates that independent operators of public payphones, companies like ETS, can provide a higher level of service while incurring lower cost than the larger, less efficient operators.

The broad base of operations built by ETS crosses many state and local government boundaries, and provides a high quality, efficient management system for payphone owners from coast to coast. ETS manages payphones based in locations such as national, regional and local fast food chains, restaurants, hotels, convenience stores, airports, sports arenas, and many other locations where the general public demands the convenience of public payphones. For private payphone owners, the need to enter into multiple agreements with many different payphone service companies is eliminated. Both the site location owner and the payphone owner can benefit from the efficiencies and management expertise provided by ETS. Profits for both are maximized and all reports on payphone activity are provided from one central location, accurately and on time.

ETS offices are located at 561 Thornton Road, Suite K. Lithia Springs, Georgia 30122. The telephone number is 770-819-1600 and the fax number is 770-819-1685. ETS is a member of the Better Business Bureau of Metropolitan Atlanta, and the American Public Communications Council (APPC), the national industry association.

2. MANAGEMENT TEAM

Charles E. Edwards - President and Chief Executive Officer

Mr. Edwards is the founder and also serves as the director for the Company. Mr. Edwards has 30 plus years of experience building successful sales organizations and international marketing and manufacturing firms. Mr. Edwards has spent the last nine years in the telecommunications industry.

Specific to COCOTs, Mr. Edwards has been an owner and operator of private payphones in the Tennessee area. More importantly, Mr. Edwards has devoted the last six years to research in the payphone and telecommunications industry. In addition to his duties with ETS, Mr. Edwards also serves on the Board of Directors of the Georgia Payphone Association.

Kenneth R. Stricklin - Chief of Staff

Mr. Stricklin brings more than 35 years of financial and operations management experience. His background includes six years of public accounting and 16 years of financial management with the Motion Picture Theatre, Television and Radio Station subsidiaries of Fuqua Industries, Inc. His operations

management experience was developed while on the Executive Staff at Rollins, Inc., as Senior Vice President of Atlantic American Corporation, and as President of Georgia Casualty & Surety Company. Just prior to joining IAQ, Inc., he served as Vice President and Chief Operating Officer for Communications Central, Inc., one of the nation's largest privately owned public payphone companies.

Mario R. Commito - Chief Financial Officer

Mr. Commito has over thirty years of experience in financial and accounting management as a Chief Financial Officer and Controller. He has helped numerous start-up companies in quick-growth situations. Mr. Commito's extensive background in acquiring, supervising, and developing high-tech companies has given him the ability to effectively manage accounting systems to enhance profitability. In addition, Mr. Commito is well practiced in audit preparation, negotiating financial arrangements, tax planning and preparation, and budgeting.

Jason Edwards - Chief Operating Officer

Mr. Edwards has 8 ½ solid years of experience in the payphone industry with the past five years with ETS. Mr. Edwards has been involved in virtually every department in the company from sales and customer service to installs and field service. Since Mr. Edwards has been involved with ETS from the time ETS operated only 100 phones, he is greatly prepared to lead the company in its continued growth. During his tenure at ETS, he has recommended and implemented numerous operational changes that have positively impacted the company. Mr. Edwards has worked closely with our New York Operations department and prior to becoming the Chief Operating Officer, served as an Operations Consultant.

M. Larry Ginsburg - Vice President, Special Projects

Mr. Ginsburg is one of the founders of New York City Public Telephone Company, the oldest private payphone company in New York, and one of the oldest in the United States. Mr. Ginsburg is truly a pioneer in independent payphones. Having been involved since 1984, when private payphone ownership was permitted by the Modified Final Judgement (MFJ), signed by Judge Harold Green of the United States Supreme Court, Mr. Ginsburg was the first person to petition the State of New York to legalize private payphones. He installed the first independent payphones in 1985, and established the first independent payphone company in New York City and State. He served as President and Chief Executive Officer of Coinlel Communications, Inc. until 1990. He then served as Chief Operating Officer for Millicom Service Company from 1990 to 1993, and held the same position with New York City Public Telephone Company until 1998 when he joined ETS.

In addition to being a founding Board member of both the Independent Payphone Association of New York, and the Empire State Payphone Association. Mr. Ginsburg has worked closely with members of the City Council of New York and various city officials to formulate and inaugurate new local laws regarding public payphones.

George A. Schmidt - Vice President, Sales

Mr. Schmidt is responsible for all sales activity for ETS. This includes development and implementation of individual strategies as they relate to: Field Sales Representatives and multi-location national, regional and key accounts. Mr. Schmidt has over 21 years of sales and business management experience.

3. BUSINESS EXPERIENCE

ETS began offering services to private payphone owners in 1994. Its principals and management are experienced in the telecommunications and finance industries. This unique combination of experience has enabled the development of a capable and successful business.

4. LITIGATION

Over the past seven years neither ETS nor any of its officers, directors or any members of management have been convicted of any administrative, civil or criminal action alleging a violation of any business opportunity law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations. No officer, director, or member of management has been convicted of a felony, or pleaded nolo contendere to a felony charge or been convicted of a misdemeanor or pleaded nolo contendere to a misdemeanor charge or has been liable in civil action by final judgment involving any franchise law, securities law, unfair or deceptive practices, misappropriation of property or comparable allegation.

5. BANKRUPTCY

During the past seven years neither ETS nor any of its officers, directors or operations managers have filed bankruptcy or sought any protection from creditors under the U.S. Bankruptcy Act.

6. DESCRIPTION OF OWNER'S OPTIONS

Because the private payphone industry is made up of many small "Mom and Pop" businesses, it is believed that professional operations management is helpful to the owners in eliminating many of the problems related to running their payphone businesses. Therefore, ETS has developed three basic programs which are described below:

OPTION I
Internal Maintenance Program

Option I is presented for the private payphone Owner who wants to be involved in the day to day operation of his payphone/s, but lacks the technical expertise to do so. **Option I** allows the Owner to take full advantage of the income potential of the payphone industry.

The duties of ETS shall be the management of the Owner's payphone for its internal maintenance and repair, and providing 0+ long distance service. When the Owner obtains a Site Location Lease, a copy will be given to ETS to arrange for the establishment of the location within the parameters of the Site Location Lease Agreement. The following actions represent but do not limit the necessary requirements to operate a private payphone.

THE OWNER WILL:

- Obtain "certification" from each respective state Public Utility Commission (PUC) to own and operate a payphone.
- Obtain a signed Site Location Lease Agreement.

- Order and coordinate the installation of the payphone line from the respective telephone company for each payphone. This includes the 1+ long distance calling service.
- Order from your equipment distributor and arrange for the delivery of the payphone, payphone enclosure, pedestal mounting pad, signs, and any other materials or services required to install and operate a payphone at a new site location.
- Collect coin from coin boxes on a regularly scheduled basis and/or if notified by Company that a particular phone has a full box.
- Count, bag, and deposit all collected coins.
- Reconcile long distance calling records and request carrier commission.
- Request and account for dial around compensation from American Public Communications Council (APCC).
- Prepare and mail site location owner commission statement and commission check to arrive no later than the 25th of the month following collection.
- Prepare and respond to all inquiries or reports required by each respective state Public Utility Commission (PUC).
- Pay monthly telephone bills.
- Assume the responsibility for the profit or loss of each payphone.

ETS WILL:

- Install the Owner's payphone at the site location.
- Program the payphone to offer the special "25 Cents Anywhere" program to enhance coin revenue. This enables the caller to make a long distance call to any U. S. destination at any time of the day for 25 cents per minute.
- When feasible, visit the site and survey for requirements to install the phone.
- Download rate information to program the payphone with proper rates for local, long distance, 1-800 calls, and 911 emergency calls.
- Program the payphone for daily polling and "Call Home" feature to determine service requirements.
- Dispatch repair and service technicians when needed.
- Notify Owner when payphone requires collection.
- Prepare a management statistical activity report and mail to Owner on or about the 20th of each month for the preceding month.
- Reconcile all telephone bills and forward to Owner for payment.

OPTION I - "Internal Maintenance" Fees:

- $45 per month per payphone.
- $55 to $65 per month per payphone if installed outside states serviced by ETS. Price quotes will be provided based on location of installation.
- Fees include parts and labor for parts covered under manufacturer's warranty.
- Cost for non-warranty parts and labor will be invoiced monthly.

OPTION II
Turnkey Maintenance Program

Option II is presented for those Owners who would like to be less involved with the day to day operations of the payphone business and who want to take advantage of the income potential on a profit or loss basis.

ETS will manage and maintain the payphone including all internal and external maintenance.

repair and coin collection, and providing 0+ long distance services. The following actions represent, but do not limit the necessary requirements to operate a private payphone.

ETS WILL:

- Obtain a Site Location Lease Agreement.
- Program the payphone to offer the special "25 Cents Anywhere" program to enhance the coin revenue. This enables the caller to make a long distance call to any U.S. destination at any time of the day for only 25 cents per minute.
- Order and coordinate the installation of all payphone lines from the respective telephone company for each payphone. This includes one + long distance calling services.
- Download rate information to program the payphone with proper rates for local calls, long distance calls, 1-800 calls, and 911 emergency calls.
- Program the payphone for daily polling and "Call Home" feature to determine service requirements.
- Perform all service and maintenance as needed and on a scheduled basis. Repairs or parts replacement not covered by normal maintenance will be invoiced as needed.
- Collect, count, bag and deposit all coins:-
- Reconcile 1+ and 0+ long distance commissions on a monthly basis.
- Apply for and collect dial around compensation on a quarterly basis.
- Reconcile and pay all telephone bills.
- Prepare and mail site location owner commission statement and commission check to be received no later than the 25th of the month following collection.
- Prepare and respond to all inquiries or reports required by each respective state Public Utility Commission (PUC).
- Prepare an overall management statistical report for Owner. Report will be mailed to be received on or about the 25th of the following month, and will include all income from coin, long distance, and dial around, and all expenses, including telephone bill, site location owner commissions, monthly service fee and charges for any maintenance and parts not covered by the Turnkey Maintenance Option. It will include a check or invoice for profit or loss, whichever is required.

OWNER WILL:

- Assume the responsibility for the profit or loss for each owned payphone.

OPTION II "Turnkey Maintenance" Fees:

- $75 per month per payphone.
- This fee includes coin collection and accounting, and parts and labor for parts covered by manufacturer's warranty.
- Cost for non-warranty parts and labor will be invoiced monthly.

OPTION III
Payphone Equipment Lease Program

Option III is presented for those Owners who prefer not to be involved in the day to day operations of the payphone business and who want to limit their exposure.

ETS will execute a Lease Agreement with Owner for 60 months. ETS will provide the same quality management services as outlined in **Option II**, and also provide the services listed below.

ETS WILL:

- Obtain Site Location Agreement
- Pay $82 per month lease payment ($984 per year).
- Insure Owner/Lessor's payphone equipment for up to the total replacement cost.
- Relocate payphone to new profitable location if necessary.
- Upon request, purchase Owner/Lessor's payphone equipment and location for the original price paid, with no penalty.
- Upon request, allow Owner/Lessor to take possession of payphone equipment and location with no penalty.

OWNER WILL:

- Hold title to valuable income producing asset.
  Contact an advisor regarding any depreciation and tax advantages.

OPTION III "Payphone Equipment Lease" Fees:
None.

7. INITIAL FUNDS REQUIRED TO BE PAID BY OWNER

ETS is providing a service to the Owner; either **Option I**, an "Internal Maintenance Program", **Option II**, a "Turnkey Maintenance Program", or **Option III**, a "Payphone Equipment Lease Program".

Option I, the "Internal Maintenance Program," requires the first and last payments in advance. The current monthly fee is $45, therefore $90 is the initial cost. Additionally, the Owner's payphones require "Smart Payphone" technology, and must be compatible with Company's maintenance and management "Smart phone" technology, and must be compatible with Company's maintenance and management software. The Owner shall be responsible for the necessary expense for conversion, if required, which is estimated not to exceed $600 per phone. For Company to offer this service, the Owner's payphone must be located within the approved territory schedule. See "Exhibit D."

Option II, the "Turnkey Maintenance Program," requires the first and last payments in advance. The current monthly fee is $75, therefore $150 is the initial cost. As in **Option I**, the Owner's payphones require "smart phone" technology, however, the Company assumes the responsibility if conversion is required. Also, the payphone must be located within the approved area. See "Exhibit D."

Option III, the "Payphone Equipment Lease Program," requires no initial payment.

8. RECURRING FUNDS REQUIRED BY OWNER

Option I, the "Internal Maintenance Program," requires purchaser to submit a monthly maintenance fee in advance on the first of each month.

Option II, the "Turnkey Maintenance Program" requires the monthly maintenance fee be deducted from monthly revenue. In any given month, if the monthly revenue is less than the required monthly maintenance fee, an invoice will be sent to Owner and is due upon receipt.

Option III, the "Payphone Equipment Lease Program" requires no recurring payment.

9. REQUIRED AFFILLIATES

Owners selecting **Option I** or **Option II** as described in this document, are not required to conduct business with any affiliated person or entity of the Company, except when agreement requires services to be performed by the Company. In such case, the Company has the sole authority to provide service with any of its vendors and with the understanding that those services will be provided within the monthly maintenance agreements as described in **Option I** and **Option II**.

Owners selecting **Option III** as described in this document, permits ETS the sole authority to use any of its qualified vendors and suppliers. The Owner has no obligation or requirement to conduct business with anyone.

10. OWNER RELATIONSHIP TO THE COMPANY

The relationship between ETS and Owner is not that of franchiser and franchisee. ETS does not charge franchise fees. ETS merely provides a service and by entering into a service agreement or lease agreement. The Owner does not become an employee, agent, distributor or franchisee of ETS.

11. COMPANY DECLARATION TO THE OWNER

ETS does not receive any kickbacks, incentives or any payments whatsoever from any vendor as a result of the Lease Agreement. ETS will receive its normal revenues from coin collection, long distance calling or dial around compensation and will be totally responsible for all expenses related to operation of the equipment. The Owner will receive a monthly lease payment.

12. FINANCIAL ARRANGEMENTS

ETS does not offer to finance any purchase made by the Owner. ETS will, however, lease the payphone from the Owner/Lessor based on the terms in the Lease Agreement ("Exhibit B").

13. RESTRICTION OF SERVICE AREA

The Owner is restricted to soliciting for locations only in the territories as described in the Approved Territory Schedule ("Exhibit D").

14. OWNER PARTICIPATION REQUIREMENTS

The Owner entering into a maintenance agreement will be required to provide the services as described in "Exhibit E".

15. TERMINATION

Agreement may be terminated at any time as described by the respective agreements.

16. OWNER AND COMPANY PAYPHONES

ETS currently owns or operates approximately 32,000 private payphones in 32 states. ETS has not offered to provide "Internal Maintenance," "Turnkey Maintenance," or "Payphone Equipment Lease Programs" to private owner/operators prior to October, 1994. ETS is not sure how many companies offer these services, nor is it sure of how many small private payphone owner/operators use the service.

17. SITE SELECTION

ETS requires site location owners to be located within approved territories (see "Exhibit D") for maintenance to be provided. This is a requirement for **Option I**, **Option II**, and **Option III**. ETS will not enter into maintenance or lease agreements to provide service to payphone locations outside the approved service areas.

18. TRAINING

It is not believed that training is needed or offered for Owner to participate in any of these services, unless the Owner desires to become totally involved. In this case the Owner may wish to attend a scheduled training class provided by a payphone manufacturer. The class consists of 2 full days in Sarasota, Florida and costs approximately $200 per day.

19. PUBLIC FIGURE

There is no involvement with any public figure by ETS at this time.

20. COMPANY AGENT IN GEORGIA

Company:
ETS Payphones, Inc.
561 Thornton Road, Suite K
Lithia Springs, Georgia 30122
770-819-1600
Attention: Legal Department

GA Agent:
Business Filings, Inc.
2607-D Moody Road, Suite 101
Warner Robbins, Georgia 31088-6118
1-800-981-7183

21. Exhibits

References	Exhibit A
Sample Lease Agreement	Exhibit B
Sample Option To Sell Agreement	Exhibit C
Approved Territory	Exhibit D
Requirements of Owner	Exhibit E
Location of Assigned Phones	Exhibit F

REFERENCES

LEGAL

Friedman & Associates
Attorney Sheldon Friedman
1050 Crown Point Parkway
Suite 1550
Atlanta, Georgia 30338

ACCOUNTING

Grant Thornton
2300 North Tower
235 Peachtree St., NE
Atlanta, Georgia 30303-1499

BUSINESS PRACTICES

Better Business Bureau
P.O. Box 2707 (Zip30301)
100 Edgewood Avenue
Suite 102
Atlanta, Georgia 30303

Dun & Bradstreet Business Information Services
(800) 333-0505
ETS Account Number: 94 868 3024

TRADE ASSOCIATIONS

American Public Communications Council
10306 Eaton Place
Suite 520
Fairfax, Virginia 22030

Florida Public Telephone Association
125 Gadsden Street
Suite 200
Tallahassee, Florida 32301

Exhibit A

REFERENCES

Georgia Payphone Communications Association
631 Seminole Avenue
Atlanta, Georgia 30307-1464

New Jersey Payphone Association
108 Main Street
Oceanpoint, New Jersey 07757

New Jersey Payphone Group
9 Trocha Ave.
Livingston, New Jersey 07039

Tennessee Payphone Association
420 Stable Drive
Franklin, Tennessee 37069

Independent Payphone Assoc. Of New York, Inc.
417 Harwood Building
Scarsdale, New York 10583-4199

Payphone Service Provider Group
2160 Rolling Hills Drive
Morgan Hill, California 95037
Listed under Coin Call/ETS

G/Five Corporation
4554 Caterpillar Road, Suite C
Redding, California 96049
Listed under ETS

Oklahoma Payphone Association
P.O Box 22303
Oklahoma City, Oklahoma 73123

Texas Payphone Association
P.O. Box 476
Austin, Texas 78767

Exhibit A

Exhibit B

Telephone Equipment Lease Agreement
Lease Number: _____

THIS AGREEMENT is made and entered into this ____ day of _____, 1999 by and between ETS Payphones, Inc., a Georgia corporation (hereinafter "LESSEE") and _____ (_____) (hereinafter "LESSOR").

Witnesseth:

WHEREAS, LESSOR, as owner of _____ (_____) unit(s) of the telephone EQUIPMENT described on Exhibit A, attached hereto and by reference made a part hereof (the "EQUIPMENT") desires to lease said EQUIPMENT to LESSEE and LESSEE desires to lease said EQUIPMENT from LESSOR, all upon the terms and subject to the conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained and for good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. **LEASE OF EQUIPMENT.** Subject to the conditions herein, LESSOR hereby leases the EQUIPMENT to LESSEE and LESSEE hereby leases the EQUIPMENT from LESSOR.

2. **TERM.** This lease shall commence (the "Commencement Date") as of the date provided above and shall remain in full force and effect for an Initial Term of sixty (60) months thereafter (the "Initial Term"). Upon the expiration of said Initial Term, this lease shall be automatically renewed, for an additional Renewal Term of sixty (60) months (the "Renewal Term") unless at least ninety (90) days prior to the end of the Initial Term, either party gives written notice to the other that said party elects not to continue during the Renewal Term. The Initial Term and the Renewal Term are hereinafter collectively deemed the "Term" of this lease. The monthly rent payment for the EQUIPMENT during such Renewal Term shall be the same as the existing rate under the Initial Term. Should LESSOR choose to terminate this lease and take possession of the EQUIPMENT and LOCATION prior to the lease expiration, LESSOR may do so with a ninety (90) day written notice.

3. **RENT.** LESSEE shall pay monthly rental to LESSOR for the EQUIPMENT at the rate of _____ Dollars ($_____) per month per unit. The first monthly rental payment shall be due on the Commencement Date. All subsequent monthly rental payments shall be due on the 1st or 15th day of each succeeding calendar month in accordance with the "Commencement Date" through the term hereof.

Note: LESSOR rental checks shall be sent out by U.S. mail and shall be sent on the 1st or 15th day of each month. However, should the 1st or 15th of the month fall on a Saturday or Sunday, the checks shall be sent the following Monday.

Exhibit B

4. **TITLE.** This Agreement creates a lease of the EQUIPMENT. Nothing contained herein shall be deemed or construed as enabling LESSEE to acquire the right, title or interest in the EQUIPMENT or LOCATION, except as set forth in Section 15 and 16 hereof.

5. **NET LEASE.** Except as expressly provided herein, the parties hereto expressly agree to and acknowledge that this is a "Net Lease" requiring LESSEE to bear the entire cost of using the EQUIPMENT and LOCATION through the Term of this lease. LESSEE shall be responsible for, and shall pay all expenses of, insurance, repair, service and maintenance of the EQUIPMENT and of the LOCATION. LESSEE may, at LESSEE's expense, contract with third parties to provide such repair, service and maintenance.

6. **LOCATION.** The location of the EQUIPMENT shall be set forth on Exhibit A. LESSEE shall be responsible for selecting the location for installation of the EQUIPMENT. LESSEE has the right and sole authority to move EQUIPMENT to a new location should the original location prove to be unprofitable or prove to be in a high vandalism area. LESSOR will be notified in the event of site exchange and will receive notification of the address of the new location. In the event that LESSOR terminates the lease prior to the expiration of the Term and elects to retain the EQUIPMENT, LESSEE shall assign the applicable location lease to the LESSOR by a written letter of assignment between the parties; otherwise LESSEE shall retain the rights to the location.

7. **INDEMNIFICATION AND INSURANCE.**

a. LESSEE shall indemnify and hold LESSOR harmless from and against any and all loss, damage, liability and expense (including, without limitation, reasonable attorneys' fees) which LESSOR shall sustain as a result of (i) the loss of or damage to the EQUIPMENT because of fire, theft, collision, lightning, flood, windstorm, or any other casualty at any time during the Term hereof, or (ii) the death of or injury to any person or damage to any property as a result, in whole or in part, of the use or maintenance of the EQUIPMENT at any time during the Term of this lease.

b. LESSEE's obligations pursuant to Section 7a above shall be deemed satisfied if LESSEE obtains and maintains in full force and effect throughout the Term hereof, at the sole cost and expense of LESSEE, a policy or policies of insurance issued by an insurer reasonably satisfactory to LESSOR, with premiums prepaid thereon, insuring LESSEE against the risks and hazards specified in Section 7a (i) hereof with minimum coverage of $100,000 for property damage ($500,000 for the death of or injury to any one person) and $2,000,000 for any one accident or occurrence.

c. LESSEE's failure to obtain the insurance coverage specified in Section 7b hereof shall not affect LESSEE's obligations under this lease. The loss of, damage to or destruction of the EQUIPMENT shall not terminate this lease; nor to the extent that LESSOR is actually compensated by insurance paid for by LESSEE, as herein provided, relieve LESSEE from LESSEE's liability hereunder. Should LESSEE fail to so procure or maintain the insurance required under this Section 7, then LESSOR shall have the option, but not the obligation, to procure or maintain such insurance coverage for the account of LESSEE, and in that event. LESSEE shall reimburse LESSOR within seven (7) days after receipt of any invoice for any payment made therefore by LESSOR. Failure to so reimburse LESSOR shall be deemed a default under the terms of Section 10 hereof.

8. **TAXES AND OTHER CHARGES.** LESSEE shall pay, when due, any and all use taxes, personal property taxes and any and all other taxes which may be imposed by the ownership, possession, use or operation of the EQUIPMENT at any time during the Term hereof or which are levied against or measured by the gross receipts delivered to LESSOR as a result of the payment of rent by LESSEE hereunder.

9. **USE, OPERATION, ALTERATIONS AND ADDITIONS.** The EQUIPMENT shall at all times during the Term hereof be under the sole and absolute control of LESSEE, subject to the rights of LESSOR in the event of a default by LESSEE as provided herein. LESSEE shall comply with any and all laws and regulations applicable to the operation of the EQUIPMENT, and shall be solely responsible for the payment of any and all fines or penalties resulting from its failure to comply therewith. LESSEE shall maintain the EQUIPMENT in good working order at the location identified on Exhibit A, attached hereto, at all times throughout the Term hereof or at any other location where the EQUIPMENT may have been relocated. LESSEE may from time to time add further parts or accessories to the EQUIPMENT, provided any such addition does not materially affect or materially impair the value of the EQUIPMENT. Any such additions shall become the property of the LESSOR.

10. **DEFAULT AND REMEDIES.**

a. **DEFAULT.** The occurrence of any one of the following events shall constitute an event of default by LESSEE:

1. A default by LESSEE in the payment of any amount due hereunder as and when the same shall become due and the continuance of such default for a period of more than twenty (20) days following LESSEE's receipt of written notice of such default requiring the same to be cured; or

2. A default by LESSEE in the performance of any of its material obligations under this lease and the continuance of such default for a period of more than thirty (30) days following LESSEE's receipt of written notice of such default requiring the same to be cured; provided, however, that if more than thirty (30) days are reasonably required in order to cure any such default, then no default shall be deemed to have occurred so long as the curing of such default is commenced by LESSEE within such thirty (30) day period and LESSEE thereafter diligently prosecutes the curing of such default to completion; or

3. Whenever an involuntary petition shall be filed against LESSEE under any bankruptcy or insolvency law or under the reorganization provisions of any law or like import, or a receiver of LESSEE of or for the property of LESSEE shall be appointed without the acquiescence of LESSEE and such situation under this Section 10a-3 shall continue and remain undischarged or unstayed for an aggregate period of thirty (30) days (whether or not consecutive) or shall not be remedied by LESSEE within thirty (30) days; or

4. Whenever LESSEE shall make an assignment of the property of LESSEE for the benefit of creditors, shall file a voluntary petition under any bankruptcy or insolvency law, or whenever any court of competent jurisdiction shall approve a petition filed by LESSEE under the reorganization provisions of the United States Bankruptcy Act or under the provisions of any law or like import; or

5. The abandonment of the EQUIPMENT by LESSEE or the discontinuance of the operation of such EQUIPMENT by LESSEE; or

6. The failure to notify LESSOR of any relocation within sixty (60) days; or

7. The failure of LESSEE to remove within thirty (30) days any mechanics liens on the EQUIPMENT for additional work performed on such EQUIPMENT.

b. **REMEDIES.** Upon the occurrence of an event of default under Section 10a above which is continuing and remains uncured, then LESSOR may, at its option, during the continuance of such event of default:

Exhibit B

1. Terminate this lease by written notice to LESSEE and recover from LESSEE damages incurred by reason of such default, including the reasonable costs of recovering the EQUIPMENT and reasonable attorneys' fees relating thereto, in which event LESSEE shall immediately surrender the EQUIPMENT to LESSOR, and if LESSEE fails to do so, LESSOR may take possession of the EQUIPMENT; and in that event, any rights to the EQUIPMENT that LESSEE may possess pursuant to this lease shall automatically terminate; LESSEE shall have no further right to use of the EQUIPMENT; LESSOR may, without demand or legal process, retake and retain the EQUIPMENT; all rights of LESSEE in and to the location of the installed EQUIPMENT shall be deemed automatically assigned to LESSOR; and LESSEE shall have no further rights to such location whether such rights existed during the Term hereof or arose or were to arise following termination or expiration hereof; or

2. Without terminating this lease, enter upon the location thereof and take possession of the EQUIPMENT and thereupon relet the EQUIPMENT, as LESSEE's agent, at the best price obtainable by reasonable efforts, and in such event, LESSEE shall be liable to LESSOR for any deficiency between (i) the amount of rental due hereunder plus the reasonable cost to LESSOR of recovering and reletting the EQUIPMENT, including reasonable attorneys' fees, and (ii) the rental received by LESSOR from such reletting.

11. **SURRENDER.** Except as set forth herein, upon the expiration or earlier termination of this lease, LESSEE shall return the EQUIPMENT and LOCATION to LESSOR in good operating condition, normal wear and tear excepted.

12. **RIGHT OF INSPECTION.** LESSOR shall have the right at all times throughout the Term hereof to inspect the EQUIPMENT whenever and wherever the same shall be located.

13. **WARRANTIES AND CLAIMS THEREUNDER.** LESSOR makes no warranty or representation, expressed or implied, with respect to the EQUIPMENT; provided, however, that the EQUIPMENT shall be subject to any standard warranty of the manufacturers of such EQUIPMENT or components thereof. LESSOR hereby appoints LESSEE as its agent and attorney-in-fact throughout the Term hereof to assert and enforce, at LESSEE's sole expense, any claims LESSOR may have as owner of the EQUIPMENT against any vendor, manufacturer or supplier with respect thereto.

Exhibit B

14. **ASSIGNMENT.** LESSEE shall have the right to assign or sell any of its rights hereunder. LESSOR shall have the right to sell or assign its rights hereunder, including any or all of LESSOR's right, title and interest in and to the EQUIPMENT and location and the rent reserved herein. In the event of such assignment by LESSOR, the assignee thereof shall thereupon acquire all rights and remedies possessed by or available to LESSOR. Upon receiving proper notice of any such assignment, LESSEE shall thereafter make any and all rental payments as therein directed.

15. **RIGHT OF FIRST REFUSAL.** In the event LESSOR obtains an offer from a third party for the purchase of the EQUIPMENT, then LESSOR shall thereupon provide LESSEE with written notice of the proposed sale and terms thereof. LESSEE shall thereafter have thirty (30) days from the date of its receipt of such notice in which to give written notice to LESSOR of its election to purchase the EQUIPMENT upon the same terms and conditions as the third-party offer. If LESSOR does not receive written notice of such election from LESSEE within such thirty (30) day period, then LESSOR shall be free to sell the EQUIPMENT pursuant to such third-party offer. Should LESSEE notify LESSOR of its election to purchase, then LESSEE shall have one hundred eighty (180) days to close sale from the date of the original notice.

16. **OPTION TO SELL AGREEMENT.** Should LESSOR choose to sell the EQUIPMENT to the LESSEE prior to or at the end of the Term of the lease, then LESSOR shall execute the Option to Sell Agreement attached hereto and by reference made a part hereof as Exhibit B. The terms and conditions of the Option To Sell Agreement shall govern the purchase by the LESSEE of the EQUIPMENT. LESSEE shall have one hundred eighty (180) days from the date of receipt of the original written notice to purchase said EQUIPMENT.

17. **PERSONAL PROPERTY.** The EQUIPMENT is and at all times throughout the Term hereof shall remain personal property, even if all or any portion of the EQUIPMENT becomes affixed or attached in any matter whatsoever to any real property.

18. **ACKNOWLEDGMENT OF DISCRETION.** LESSOR represents and warrants that (a) LESSOR is free to enter into agreements with parties other than LESSEE for the economic exploitation of the EQUIPMENT; (b) LESSOR was not required to enter into this lease as a condition to purchasing the EQUIPMENT; and (c) LESSOR has freely and voluntarily entered into this lease and acknowledges that LESSOR is not entering into or executing this lease in reliance upon any promise, representation or warranty not contained herein.

19. **NOTICES.** Any and all notices required or permitted hereunder shall be notarized, in writing and sent to the intended recipient, addressed to its address set forth below, either by registered or certified mail, return receipt requested, postage prepaid, overnight delivery service, or personal delivery. Each such notarized notice shall be effective (a) if given by mail, as of three (3) business days after such notice or communication is deposited in the United States Mail; (b) if sent for overnight delivery via Federal Express or other reputable national overnight delivery service, one (1) business day after such notice or delivery is entrusted to such service, with recipient signature required; or (c) if personally delivered, when delivered at the address of the intended recipient. Any party may change the address to which notices or other communications hereunder are to be delivered by giving the other party notice in the manner set forth herein. Any notice required to be made within a stated period of time shall be considered timely mailed if deposited before midnight of the last day of the stated period.

Exhibit B

20. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

21. **SPECIFIC PERFORMANCE.** Each party acknowledges and agrees that the other party would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each party agrees that the other party shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to specifically enforce this Agreement and the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having jurisdiction over the parties and the matter, in addition to any other remedy to which it may be entitled, at law or in equity.

22. **DISPUTE RESOLUTION CONTRACT PROVISION.**

a. **Dispute.** Any dispute, controversy, or claim of whatever nature (except an interlocutory hearing for an action for a temporary restraining order, preliminary injunction, or similar equitable relief) asserted by any party against another party arising out of, or relating to, this Agreement or the breach hereof, shall be settled by arbitration, if requested, by any party pursuant to this Section 21. The arbitration shall be conducted by one (1) arbitrator, who shall be appointed pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration shall be held in Atlanta, Georgia, and shall be conducted in accordance with the Commercial Arbitration Rules of the AAA, except that the rules set forth in this Section 21 shall govern such arbitration to the extent that they conflict with the rules of the AAA.

b. **Notice.** Upon written notice by a party to another party of a request for arbitration hereunder, the parties shall use their best efforts to cause the arbitration to be conducted in an expeditious manner, with such arbitration to be completed within sixty (60) days after selection of an arbitrator. In the arbitration, Georgia law shall govern, except to the extent those laws conflict with the Commercial Arbitration Rules of the AAA and the provisions of this Section 21. There shall be no discovery except as the arbitrator shall permit following determination by the arbitrator that the party seeking such discovery has a substantial demonstrable need. All other procedural matters shall be within the discretion of the arbitrator. In the event a party fails to comply with the procedures in any arbitration in any manner determined by the arbitrator, the arbitrator shall fix a reasonable period of time for compliance and, if the party fails to comply within such period, a remedy deemed just by the arbitrator, including, without limitation, an award of default, may be imposed.

Exhibit B

23. **MISCELLANEOUS.** This Agreement shall be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns. Wherever possible each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or remaining provisions of this Agreement. No delay or failure on the part of either party in the exercise of any right or remedy hereunder shall operate as a waiver thereof, nor as an acquiescence in any default, nor shall any single or partial exercise by either party of any right or remedy preclude any other right or remedy. This Agreement and the documents referred to herein constitutes the entire agreement between the parties concerning the subject maner hereof, and any other agreements or understandings of any nature with respect to such matters are hereby superseded and revoked. This Agreement shall not be modified or amended except in writing signed by both parties. This Agreement may be executed and delivered in any number of counterparts, including facsimile counterparts, all of which when executed and delivered shall have the force and effect of an original. In construing this Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa in any place where the context so requires, and plural terms shall be substituted for singular and singular for plural in any place where the context so requires. The headings in this Agreement are inserted for convenience only and are not a part of the Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the date first above written.

Check one: _____ Individual _____ Partnership _____ Corporation
_____ Self-Directed IRA _____ Trust _____ Other
_____ Joint Tenancy with Right of Survivorship

LESSEE: ETS Payphones, Inc.

By: Charles E. Edwards
Title: CEO

Address: 561 Thornton Road, Suite K
Lithia Springs, GA 30122

Telephone Number: (770) 819-1600

Date: _____

LESSOR: _____

By: _____
Title: _____

Address: _____

_____

Telephone Number: _____

Date: _____

Exhibit C

OPTION TO SELL AGREEMENT
(Exhibit B to Telephone Equipment Lease Agreement)

THIS AGREEMENT is made and entered into as of the ____ day of _____, 1999, by and between _____ (hereinafter referred to as "LESSOR"), and ETS Payphones, Inc., a Georgia corporation (hereinafter referred to as "LESSEE").

THE PARTIES HERETO ACKNOWLEDGE THAT THIS AGREEMENT INURES TO THE BENEFIT OF LESSOR, AND THAT LESSOR RETAINS SOLE AND COMPLETE DISCRETION IN DETERMINING WHETHER OR NOT TO EXERCISE THE REQUIREMENTS HEREINAFTER SET FORTH.

WITNESSETH:

WHEREAS, LESSOR is the owner of _____ (_____) unit(s) of pay telephone Equipment (the "Equipment") pursuant to that certain PURCHASE AGREEMENT dated _____, 19____, as reflected on Invoice Number _____ related thereto; and

WHEREAS, LESSOR and LESSEE have entered into that certain Lease Agreement (the "Lease Agreement") dated _____, 19____, bearing Lease Number _____, pursuant to which LESSEE has leased the Equipment from LESSOR; and

WHEREAS, pursuant to the Lease Agreement, LESSOR is entitled to require LESSEE to purchase the Equipment prior to or upon termination of the Lease Agreement; and

WHEREAS, the parties have therefore determined that it would be appropriate and in their mutual best interests to enter into this Option to Sell Agreement in order to evidence the rights of LESSOR and the obligations of LESSEE for the sale and purchase of said Equipment; and

WHEREAS, certain terms used herein without definition shall have the meanings ascribed thereto in the Lease Agreement, and this Option to Sell Agreement is made subject to the terms and conditions of said Lease Agreement, all of which are incorporated herein and by reference made a part hereof;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained and for other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the parties agree as follows:

Exhibit C

1. **Agreement to Purchase Equipment.** Subject to the terms and conditions set forth herein, LESSEE agrees to purchase the Equipment from LESSOR if LESSOR elects to sell such Equipment. If LESSOR desires that LESSEE purchase the Equipment prior to or upon expiration of the Lease Agreement, then LESSOR shall give written notice to LESSEE of such requirement. LESSEE shall have 180 days from the date of receipt of written notice to purchase Equipment should LESSOR wish to sell.

2. **Purchase Price.** The price to be paid by LESSEE to LESSOR for such Equipment (the "Purchase Price") shall be _____ Dollars ($_____) per unit. The Purchase Price shall be payable by the LESSEE's delivery of a check for the aggregate amount thereof to LESSOR at LESSOR's address set forth herein.

3. **Termination.** This Option to Sell Agreement shall terminate and be void upon the earlier of: (i) termination of the Lease Agreement; or (ii) the expiration of one hundred and twenty (120) months from execution hereof.

4. **Notices.** All notices required or permitted to be given hereunder shall be notarized , in writing and may be delivered by hand, by nationally recognized private courier, or by United States mail. Notices delivered by mail shall be deemed given three (3) business days after being deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested. Notarized notices delivered by hand, or by nationally recognized private couriers shall be deemed given on the day of receipt (if such day is a business day or, if such day is not a business day, the next succeeding business day). All notices shall be addressed as follows:

If to LESSOR:

_____
_____
_____

If to LESSEE:

ETS Payphones, Inc.
561 Thornton Road, Suite K
Lithia Springs, GA 30122

and/or to such other respective addresses as may be designated by notice given in accordance with the provisions of this Section 4.

5. **Governing Law.** This Option to Sell Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

Exhibit C

6. **Construction.** The parties have participated jointly in the negotiation of this Option to Sell Agreement. In the event an ambiguity or question of intent or interpretation arises, this Option to Sell Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Option to Sell Agreement. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

7. **Dispute Resolution Contract Provision.**

a. **Dispute.** Any dispute, controversy, or claim of whatever nature (except an interlocutory hearing for an action for a temporary restraining order, preliminary injunction, or similar equitable relief) asserted by any party against another party arising out of, or relating to, this Option to Sell Agreement or the breach hereof, shall be settled by arbitration, if requested, by any party pursuant to this Section 7. The arbitration shall be conducted by one (1) arbitrator, who shall be appointed pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration shall be held in Atlanta, Georgia, and shall be conducted in accordance with the Commercial Arbitration Rules of the AAA, except that the rules set forth in this Section 7 shall govern such arbitration to the extent that they conflict with the rules of the AAA.

b. **Notice.** Upon written notice by a party to another party of a request by arbitration hereunder, the parties shall use their best efforts to cause the arbitration to be conducted in an expeditious manner, with such arbitration to be completed within sixty (60) days after selection of an arbitrator. In the arbitration, Georgia law shall govern, except to the extent those laws conflict with the Commercial Arbitration Rules of the AAA and the provisions of this Section 7. There shall be no discovery except as the arbitrator shall permit following determination by the arbitrator that the party seeking such discovery has a substantial demonstrable need. All other procedural matters shall be within the discretion of the arbitrator. In the event a party fails to comply with the procedures in any arbitration in any manner determined by the arbitrator, the arbitrator shall fix a reasonable period of time for compliance and, if the party fails to comply within such period, a remedy deemed just by the arbitrator, including, without limitation, an award of default, may be imposed.

8. **Miscellaneous.** This Option to Sell Agreement shall be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns. Wherever possible each provision of this Option to Sell Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or remaining provisions of this Option to Sell Agreement. No delay or failure on the part of either party in the exercise of any right or remedy hereunder shall operate as a waiver thereof, nor as an acquiescence in any default, nor shall any single or partial exercise by either party of any right or remedy preclude any other right or remedy. This Option to Sell Agreement and the documents referred to herein constitutes the entire agreement between the parties concerning the subject matter hereof, and any other agreements or understandings of any nature with respect to such matters are hereby superseded and revoked.

Exhibit C

This Option to Sell Agreement shall not be modified or amended except in writing signed by both parties. This Option to Sell Agreement may be executed and delivered in any number of counterparts, including facsimile counterparts, all of which when executed and delivered shall have the force and effect of an original. In construing this Option to Sell Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa in any place where the context so requires, and plural terms shall be substituted for singular and singular for plural in any place where the context so requires. The headings in this Option to Sell Agreement are inserted for convenience only and are not a part of the Option to Sell Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the date first above written.

LESSEE: ETS Payphones, Inc.

By: Charles E. Edwards
Title: CEO

LESSOR: _____

By: _____
Title: _____

ETS Payphones, Inc.
Approved Territory Schedule
February 1, 1999

As of the above date, the following are the only approved states in which ETS will offer the Maintenance Program:

Ohio	North Carolina	Louisiana	Mississippi
Arkansas	Alabama	South Carolina	Maryland
Pennsylvania	Texas	California	West Virginia
Oklahoma	Indiana	Georgia	Tennessee
Florida	Virginia	New York	New Jersey
Kentucky	Arizona	Colorado	Illinois
Iowa	Kansas	Michigan	Minnesota
Missouri	Nebraska	New Mexico	Wisconsin

and the Virgin Islands and Mexico

Exhibit D

ETS Payphones, Inc.

Items required to be performed by Owner if Owner selects the ETS Maintenance Program:

1. Location Lease	*Signed by owner of location*
2. Site Survey	*Completed to determine where phone should be located*
3. Letter of Agency	*Signed by owner of location*
4. Coin Revenue Collection	*Optional – may enter Maintenance Agreement*
5. External Maintenance	*General appearance*

Exhibit E

The Equipment

The equipment described herein constitutes _____ ( )unit(s) of operating payphone stations.

Unit 1
Location: _____
_____
_____
_____
Serial No. _____

Unit 5
Location: _____
_____
_____
_____
Serial No. _____

Unit 2
Location: _____
_____
_____
_____
Serial No. _____

Unit 6
Location: _____
_____
_____
_____
Serial No. _____

Unit 3
Location: _____
_____
_____
_____
Serial No. _____

Unit 7
Location: _____
_____
_____
_____
Serial No. _____

Unit 4
Location: _____
_____
_____
_____
Serial No. _____

Unit 8
Location: _____
_____
_____
_____
Serial No. _____

Exhibit F

561 Thornton Rd • Suite K • Lithia Springs GA 30122
(770) 819-1600 • FAX (770) 319-9233
www.etspayphones.com